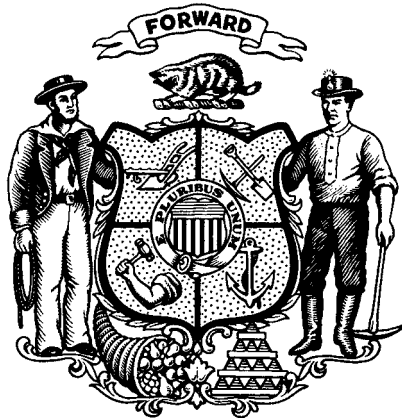


# **Chapter B7 of the Financial Management Manual**

## **Model Purchase of Services Contract**

**A guide for writing contracts under  
Wis. Stat. 46.036**



**2004**

# Model Purchase of Services Contract

A guide for writing contracts under Wis. Stat. 46.036

## Foreword

Wis. Stat. 46.036 requires counties to use contracts under certain circumstances and specifies requirements for the business relationship between Purchasers and Providers. This document is a guide for meeting the requirements of the statute.

County, provider, and department contract experts contributed to this guide. In addition, many of the contract articles are from contracts that counties are already using. The complete text of several of these contracts are online at [www.dhfs.state.wi.us/grants](http://www.dhfs.state.wi.us/grants).

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# Introduction

## Definitions

In this document,

*Care and services* is a term used in Wis. Stat. 46.036, and the statute does not define what is meant by this term. Our working definition is “Units of service or outcomes purchased by the county or the department for the benefit of a client or group of clients in accordance with the Purchaser's service plan for the client(s).” This would not include purchases of goods (widgets) or administrative services although the guidance in this document might be useful for these other types of purchases. It’s questionable whether “care and services” includes grants. For now, we are assuming it does.

*Department* means the Department of Health and Family Services.

*Purchaser* means a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437.

“County department under

... s. 46.215” is a Department of Social Services in a county with population of 500,000 or more.

... 46.22” is a Department of Social Services.

... 46.23” is a Department of Human Services.

... 51.42” is for community mental health, developmental disabilities and alcohol and other drug abuse.

... 51.437” is for developmental disabilities.

*Provider* means an agency which receives county or department funding for the provision of care and services.

## The requirement for contacts in Wis. Stat. 46.036

Wis. Stat. 46.036 requires a contract for all purchases of care and services, with the following exceptions:

- Care provided by foster homes licensed under s.48.62. (Note: Contracts ARE required for group homes licensed under s.48.625.)
- When a Provider under contract with a county agency obtains services from another vendor (ancillary services).
- When day care is provided via a voucher directly to a client.
- Placement in a community-based residential facility (CBRF) when the CBRF is owned or operated by the county making the placement.
- When paying for services or items through the Family Support Program between a family and the county agency.

- When a payment is made directly to a client from a county agency. (Note: Individual client vouchers cannot be used in lieu of formal contracts for CBRF services.)

In addition, the Department's regional offices have made a blanket waiver of the requirement for a written contract for the following situations:

- For purchases of \$10,000 or less in a calendar year.
- When a child is placed in a group home where another department of social services or human services is the sponsoring agency. The sponsoring agency must have a contract with a group home (less than \$10,000 in a calendar year).
- For emergency or one-time unanticipated client-specific services (less than \$10,000 in a calendar year).

The final exception is an individual waiver from the regional office for a specific situation. Contracts are required for all other purchases of care and services.

### ***Wis. Stat. 46.036 and the Model Purchase of Services Contract***

In addition to specifying that contracts are generally needed, Wis. Stat. 46.036 also specifies requirements for the business relationship between Purchasers and Providers. This document offers a model purchase of services contract for meeting the requirements of the statute. Purchasers can use the entire model purchase of services contract contained in this document or just the parts that they find useful. They can also modify articles to suit their business needs. Purchasers should consult with their legal counsels when developing their contracts.

### ***Overview of this document***

This guide consists of:

- Individual chapters for the contract front matter and for each contract article, including contract language for different situations,
- Example of a contract pulled for a hypothetical contracting situation,
- Guidance on using a short form of the contract, and
- Crosswalk between Wis. Stat. 46.036 and the model contract.

We organized the articles and chapters on each of those articles alphabetically to make them easy to find. Contract writers can arrange articles in any manner they prefer when writing their contracts.

### ***Contract resources website***

This document and other contract resources, including examples of contracts used by counties, are online at [www.dhfs.state.wi.us/grants](http://www.dhfs.state.wi.us/grants).

# Model Purchase of Services Contract

## A guide for writing contracts under Wis. Stat. 46.036

### Contract Front Matter

The contract front matter contains four sections. The first and last sections, “*Purchaser and Provider Information*” and “*Signatures*,” should be included in some form in all contracts. The second and third sections, “*Contract Information*” and “*Summary of Contract Provisions*,” are optional. These two sections provide a high-level overview of the contract and serve as an organizing aid when writing the contract, a table of contents of the contract itself, and a list of items the Purchaser and Provider attach to the contract.

The “*Source of Funding*” entry in the “*Contract Information Section*” needs additional explanation. When an audit is required, the Purchaser must provide the Provider with information on the source of funding so that the Provider’s auditor can properly plan and perform the audit. The funding information that is needed for audit purposes includes the name of the program, the federal agency where the program originated, the federal identifying number from the Code of Federal Domestic Assistance (CFDA number), and the percentages of federal, state, and local funds constituting the grant. In many cases, this information can be derived from the department’s listing of Community Aids Reporting System (CARS) program funding sources, which are online at <http://www.dhfs.state.wi.us/bfs/CARS/index.htm>.

For example, the funding for a 2002 contract that is funded by the Community Integration II program (CARS Profile Number 384) would be shown as:

59.03%	from the federal Medical Assistance program, CFDA Number 93.778
<u>40.97%</u>	from state funding, identification number 435.384
100.00%	

In order to be enforceable, the contract must be signed by authorized representatives of the Provider and the Purchaser. The Purchaser should contact its legal counsel if questions arise about who can sign the contract.

Identification of the parties to the contract is a necessary part of the contract, and this is one way to show the information.

See [Guidance for Contract Front Matter](#)

This section is **optional** and provides a high level summary of the contract. An experienced contract administrator could use the information in this section and in the following section to obtain an overview of the contract.

See [Guidance for Contract Front Matter](#)

## Purchase of Services Contract

### Purchaser and Provider Information

**Purchaser:**

Organization Name

Address

Name of contact person

Telephone

Fax

E-mail

**Provider:**

Organization Name

Address

Name of contact person

Telephone

Fax

E-mail

Provider's fiscal year end:

Provider's Employer

Identification Number:

### Contract Information

**Contract Number:**

**Services to be**

**provided:** [detail is in "Services to be Provided" section]

**Contract period:**

**Maximum payment**

**under this contract:**

**Source of funding:**



See [Guidance for Contract Front Matter](#)

See [Guidance for Article 1](#)

See [Guidance for Article 2](#)

See [Guidance for Article 3](#)

See [Guidance for Article 4](#)

See [Guidance for Article 5](#)

See [Guidance for Article 6](#)

See [Guidance for Article 7](#)

See [Guidance for Article 8](#)

## Summary of Contract Provisions

<u>Provision</u>	<u>Comments</u>
<b>Article 1 Audit</b>	<i>Audit requirement</i> <input type="checkbox"/> Agency-wide <input type="checkbox"/> Program <input type="checkbox"/> Agreed-upon procedures <input type="checkbox"/> Audit is waived
<b>Article 2 Caregiver Background Checks</b>	<i>Applicable?</i> <input type="checkbox"/> No <input type="checkbox"/> Yes
<b>Article 3 Civil Rights Compliance Plan</b>	<i>Provider have more than 25 employees <u>and</u> more than \$25,000?</i> <input type="checkbox"/> No (Provider attach Letter of Assurance to the contract) <input type="checkbox"/> Yes (Provider attach Civil Rights Compliance Plan to the contract)
<b>Article 4 Client Funds</b>	<i>Client funds</i> <input type="checkbox"/> Provider prohibited from handling client funds <input type="checkbox"/> Provider allowed to handle client funds (Purchaser attach requirements for handling client funds to contract) <input type="checkbox"/> Not relevant
<b>Article 5 Client Rights and Grievances</b>	
<b>Article 6 Conditions of the Parties Obligations</b>	
<b>Article 7 Confidentiality</b>	
<b>Article 8 Conflict of Interest</b>	

See [Guidance for Article 9](#)

**Article 9 Debarment and Suspension**

See [Guidance for Article 10](#)

**Article 10 Eligibility**

*Determining eligibility*

- ☐ Purchaser determines eligibility
- ☐ Provider determines eligibility (Purchaser attach eligibility requirements to contract)
- ☐ No eligibility requirement

See [Guidance for Article 11](#)

**Article 11 Health Insurance Portability and Accountability Act of 1996 "HIPAA" Applicability**

*Business Associate?*

- ☐ No
- ☐ Yes (Purchaser attach "Business Associate Agreement" to contract and Provider sign)

*PHI?*

- ☐ No
- ☐ Yes (Purchaser attach "Agreement on Provider Use of PHI" to contract and Provider sign)

*Electronic Billing?*

- ☐ No
- ☐ Yes (Purchaser attach "Trading Partner Agreement and Companion Guides" to contract and Provider sign)

See [Guidance for Article 12](#)

**Article 12 Indemnity and Insurance**

Provider attach Certificate of Insurance to contract

See [Guidance for Article 13](#)

**Article 13 Independent Contractor**

See [Guidance for Article 14](#)

**Article 14 License, Certification,  
and Staffing**

*License or certification  
required?*

- ☐ No
- ☐ Yes (Provider attach  
copy of license/  
certification and most  
recent inspection report  
to contract)

See [Guidance for Article 15](#)

**Article 15 Liquidated Damages**

*Liquidated damages provision  
applies?*

- ☐ No
- ☐ Yes, damage amount is  
agreed-upon

See [Guidance for Article 16](#)

**Article 16 Matching, Level of  
Effort, and Earmarking**

*Matching, level of effort and  
earmarking requirements:*

- ☐ No matching, level of  
effort, or earmarking  
requirements
- ☐ Matching requirements  
(Purchaser attach  
matching requirements  
to contract)
- ☐ Level of effort  
requirements  
(Purchaser attach level  
of effort requirements  
to contract)
- ☐ Earmarking  
requirement (Purchaser  
attach earmarking  
requirements to  
contract)

See [Guidance for Article 17](#)

**Article 17 Payment and Allowable Costs**

*Basis of payment*

- ☐ Reimbursement of allowable costs
- ☐ Unit-times-unit-price with limited profit or reserves
- ☐ Unit-times-unit-price (pure fee for service)

*Who bills clients and third parties?*

- ☐ Purchaser makes billings
- ☐ Provider makes billings (Purchaser attach billing requirements to contract)

*Advances allowed?*

- ☐ No
- ☐ Yes

*Surety bond required?*

- ☐ No
- ☐ Yes (Provider attach bond to contract)

See [Guidance for Article 18](#)

**Article 18 Records**

See [Guidance for Article 19](#)

**Article 19 Reporting**

See Article 19 for a summary of the reporting requirements under this contract

See [Guidance for Article 20](#)

**Article 20 Resolution of Disputes**

See [Guidance for Article 21](#)

**Article 21 Revision or Termination of this Contract**

See [Guidance for Article 22](#)

**Article 22 Services to be Provided**

See [Guidance for Article 23](#)

**Article 23 Special Provisions for High Risk Contract**

*High risk contract?*

- ☐ No
- ☐ Yes (Summarize special provisions here)

Signatures are required in some form. The Purchaser should contact its legal counsel if questions arise about who can sign the contract.

<div>Signatures</div> <p>This contract becomes null and void if the time between the Purchaser’s authorized representative signature and the Provider’s authorized representative signature on this contract exceeds sixty days.</p> <div><div>For Purchaser</div><div>Typed Name</div><div>Title</div><div>Signature</div><div>Date</div><div>For Provider</div><div>Typed Name</div><div>Title</div><div>Signature</div><div>Date</div></div>	
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## Article 1 Audit

Audits are required by law for many agencies that receive money from counties. Wis. Stat. 46.036 requires a Provider to have an audit that meets department standards if you give the Provider \$25,000 or more, unless the audit is waived by the department.<sup>1</sup> In addition, the Single Audit Act Amendments of 1996 require non-profits and governments to have audits when they spend \$300,000<sup>2</sup> or more in federal funds.

Department audit standards are:

- The *State Single Audit Guidelines* (on line at [www.ssag.state.wi.us](http://www.ssag.state.wi.us)) for audits of local governments that have audits in accordance with OMB Circular A-133 “Audits of States, Local Governments, and Non-Profit Organizations.”
- The *Provider Agency Audit Guide* (online at [www.dhfs.state.wi.us/grants](http://www.dhfs.state.wi.us/grants)) for all other Providers, including:
  - Non-profit organizations, whether or not they also need to have audits in accordance with OMB Circular A-133,
  - For-profit organizations, and
  - Local governments that do not need to have their audits be in accordance with OMB Circular A-133, and thus are not subject to the *State Single Audit Guidelines*.

Chapters 2 and 3 of the *Provider Agency Audit Guide* (online at [www.dhfs.state.wi.us/grants](http://www.dhfs.state.wi.us/grants)) cover assessing risk and matching audit requirements to the assessed risk. Under the PAAG, Purchasers have four options for audit based on their assessed risk of the potential for problems with the contract:

- agency-wide audit
- program audit
- agreed-upon procedures
- waive the audit with department approval if payments exceed threshold for requiring an audit

Contract language for the four options for audit is included in this chapter.

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<sup>1</sup> Some counties have obtained a waiver under Wis. Stat. 66.0143(2)(a) that allows them to use a threshold of \$75,000 instead of the threshold of \$25,000 that is in 46.036.

<sup>2</sup> The threshold for audits under OMB Circular A-133 will increase to expenditures of \$500,000 in federal funds for fiscal years ending after December 31, 2003. OMB is not allowing early implementation.

In addition to audit, an assessment of high risk could trigger other contract provisions (see [Article 23 “Special Provisions for High Risk Contract”](#)).

If you require an audit, the Provider needs to give you a copy of the audit report. If the Provider does not give you a copy of the report, the Provider is not in compliance with the conditions of the contract, and you can take steps such as withholding payment or discontinuing contracting with the Provider.

The *Provider Agency Audit Guide* and *Reviewing an Audit Report* (both online at [www.dhfs.state.wi.us/grants](http://www.dhfs.state.wi.us/grants)) have guidance on reviewing an audit report for compliance with the applicable standards and deciding how to resolve issues affecting your contracts.

### **Situation #1 - Require an agency-wide audit**

<b>Contract Section</b>	<b>Notes</b>
<p><b>Article 1 Audit</b></p> <p><b>Section 1.1 Type of audit</b> The Provider shall submit an annual agency-wide audit to the Purchaser if the total amount of annual funding provided by the Purchaser through this and other contracts is \$25,000 or more.</p> <p><b>Section 1.2 Audit Standards</b> The audit shall be in accordance with the requirements of OMB Circular A-133 “Audits of States, Local Governments, and Non-Profit Organizations” (on line at <a href="http://www.whitehouse.gov/omb/circulars">www.whitehouse.gov/omb/circulars</a>) if the Provider meets the criteria of that Circular for needing an audit in accordance with that Circular. The audit shall also be in accordance with the following department standard:</p> <ul style="list-style-type: none"> <li>a. The <i>State Single Audit Guidelines</i> (on line at <a href="http://www.ssag.state.wi.us">www.ssag.state.wi.us</a>) if the Provider is a local government that meets the criteria of OMB Circular A-133 for needing an audit in accordance with that Circular or</li> <li>b. The <i>Provider Agency Audit Guide</i> (on line at <a href="http://www.dhfs.state.wi.us/grants">www.dhfs.state.wi.us/grants</a>) for all other Providers.</li> </ul> <p><b>Section 1.3 Audit Schedules <i>[Optional]</i></b> In addition to the schedules required under the <i>State Single Audit Guidelines</i> or the <i>Provider Agency Audit Guide</i>, the reporting package</p>	<p>The additional supplementary schedule is optional. If the Purchaser allows the Provider to have profit or reserve, the schedules showing profit or reserve can help the Purchaser monitor these amounts. In</p>

sent to the Purchaser shall include a supplemental schedule showing revenue and expenses for this contract.

For profit Providers shall include a schedule in their audit reports showing the total allowable costs and the calculation of the allowable profit by contract or by service category.

Non-profit Providers shall include a Reserve Supplemental Schedule (Section 7.1.6 of the *Provider Agency Audit Guide*) in their audit reports, and this schedule shall also be by contract or service category.

#### **Section 1.4 Submitting the Reporting Package**

The Provider shall send the required reporting package to the Purchaser at the address listed in this contract. The reporting package is due to the Purchaser within 180 days of the end of the Provider's fiscal year.

#### **Section 1.5 Access to auditor's workpapers**

When contracting with an audit firm, the Provider shall authorize its auditor to provide access to work papers, reports, and other materials generated during the audit to the appropriate representatives of the Purchaser. Such access shall include the right to obtain copies of the workpapers and computer disks, or other electronic media, which document the audit work.

#### **Section 1.6 Failure to comply with the requirements of this section**

If the Provider fails to have an appropriate audit performed or fails to provide a complete audit reporting package to the Purchaser within the specified timeframe, the Purchaser may:

- a. Conduct an audit or arrange for an independent audit of the Provider and charge the cost of completing the audit to the Provider;
- b. Charge the Provider for all loss of federal or state aid or for penalties assessed to the

addition, some Purchasers need audited contract information to settle their contracts with Providers. However, additional supplemental schedules add audit cost, and they should be required only if:

- The Purchaser has determined that the information in the Schedule of Federal and State Awards (program and agency-wide audits) and the Statement of Functional Revenue and Expenses (agency-wide audits only) does not meet its information needs.
- The Purchaser's program pays the incremental cost of the additional schedule.

See Section 7.1.7 of the *Provider Agency Audit Guide* for guidance on when requiring an additional supplemental schedule is appropriate.

Modify this section if audit reports are to be sent elsewhere.



<p>Purchaser because the Provider did not submit a complete audit report within the required time frame;</p> <p>c. Disallow the cost of the audit that did not meet the applicable standards; and/or</p> <p>d. Withhold payment, cancel the contract, or take other actions deemed by the Purchaser to be necessary to protect the Purchaser's interests.</p>	
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## Situation #2 - Require a program audit

Contract Section	Notes
<p><b>Article 1 Audit</b></p> <p><b>Section 1.1 Type of audit</b></p> <p>The Provider shall submit an annual program or agency-wide audit to the Purchaser if the total amount of annual funding provided by the Purchaser through this and other contracts is \$25,000 or more.</p> <p><b>Section 1.2 Audit Standards</b></p> <p>The audit shall be in accordance with the requirements of OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations" (on line at <a href="http://www.whitehouse.gov/omb/circulars">www.whitehouse.gov/omb/circulars</a>) if the Provider meets the criteria of that Circular for needing an audit in accordance with that Circular. The audit shall also be in accordance with the following department standard:</p> <p>a. The <i>State Single Audit Guidelines</i> (on line at <a href="http://www.ssag.state.wi.us">www.ssag.state.wi.us</a>) if the Provider is a local government that meets the criteria of OMB Circular A-133 for needing an audit in accordance with that Circular or</p> <p>b. The <i>Provider Agency Audit Guide</i> (on line at <a href="http://www.dhfs.state.wi.us/grants">www.dhfs.state.wi.us/grants</a>) for all other Providers.</p>	<p>The agency can meet the requirement for a program audit by having either a program audit or agency-wide audit. Other than a reference to program audits in Section 1.1, the language is the same as what would be used for an agency-wide audit.</p>

### **Section 1.3 Audit schedules *[Optional]***

In addition to the schedules required under the *State Single Audit Guidelines* or the *Provider Agency Audit Guide*, the reporting package sent to the Purchaser shall include a supplemental schedule showing revenue and expenses for this contract.

For profit Providers shall include a schedule in their audit reports showing the total allowable costs and the calculation of the allowable profit by contract or by service category.

Non-profit Providers shall include a Reserve Supplemental Schedule (Section 7.1.6 of the *Provider Agency Audit Guide*) in their audit reports, and this schedule shall also be by contract or service category.

### **Section 1.4 Submitting the Reporting Package**

The Provider shall send the required reporting package to the Purchaser at the address listed in this contract. The reporting package is due to the Purchaser within 180 days of the end of the Provider's fiscal year.

### **Section 1.5 Access to auditor's workpapers**

When contracting with an audit firm, the Provider shall authorize its auditor to provide access to work papers, reports, and other materials generated during the audit to the appropriate representatives of the Purchaser. Such access shall include the right to obtain copies of the workpapers and computer disks, or other electronic media, which document the audit work.

### **Section 1.6 Failure to comply with the requirements of this section**

If the Provider fails to have an appropriate audit performed or fails to provide a complete audit reporting package to the Purchaser within the specified timeframe, the Purchaser may:

- a. Conduct an audit or arrange for an independent audit of the Provider and charge the cost of completing the audit to the Provider;

The additional supplementary schedule is optional. If the Purchaser allows the Provider to have profit or reserve, the schedules showing profit or reserve can help the Purchaser monitor these amounts. In addition, some Purchasers need audited contract information to settle their contracts with Providers. However, additional supplemental schedules add audit cost, and they should be required only if:

- The Purchaser has determined that the information in the Schedule of Federal and State Awards (program and agency-wide audits) and the Statement of Functional Revenue and Expenses (agency-wide audits only) does not meet its information needs.
- The Purchaser's program pays the incremental cost of the additional schedule.

See Section 7.1.7 of the *Provider Agency Audit Guide* for guidance on when requiring an additional supplemental schedule is appropriate.

Modify this section as needed if audit reports are to be sent elsewhere.

<p>b. Charge the Provider for all loss of federal or state aid or for penalties assessed to the Purchaser because the Provider did not submit a complete audit report within the required time frame;</p> <p>c. Disallow the cost of the audit that did not meet the applicable standards; and/or</p> <p>d. Withhold payment, cancel the contract, or take other actions deemed by the Purchaser to be necessary to protect the Purchaser's interests.</p>	
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### ***Situation #3 - Require agreed-upon procedures engagement***

<b>Contract Section</b>	<b>Notes</b>
<p><b>Article 1 Audit</b> The Purchaser will arrange and pay for an agreed-upon procedures engagement that will meet the audit requirements of s. 46.036 for this contract. This provision does not absolve the Provider from needing to meet any federal audit requirements that may be applicable or any audit requirements of other contracts.</p>	<p>The Purchaser should make it clear that the waiver is only in association with the audit requirements under Wis. Stat. 46.036. The Purchaser does not waive the federal audit requirements or requirements from other contracts.</p>

### ***Situation #4 - Waive the audit***

<b>Contract Section</b>	<b>Notes</b>
<p><b>Article 1 Audit</b> The Purchaser waives the audit requirement under s. 46.036 for this contract. This provision does not absolve the Provider from needing to meet any federal audit requirements that may be applicable or any audit requirements of other contracts.</p>	<p>The Purchaser should make it clear that the waiver is only in association with the audit requirements under Wis. Stat. 46.036. The Purchaser does not waive the federal audit requirements or requirements from other contracts.</p>

#### ***Resources:***

- ⇒ *Provider Agency Audit Guide* (online at [www.dhfs.state.wi.us/grants](http://www.dhfs.state.wi.us/grants))
- ⇒ *State Single Audit Guidelines* (on line at [www.ssag.state.wi.us](http://www.ssag.state.wi.us))
- ⇒ OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations" (on line at [www.whitehouse.gov/omb/circulars](http://www.whitehouse.gov/omb/circulars))

- ⇒ *Reviewing an Audit Report* (online at [www.dhfs.state.wi.us/grants](http://www.dhfs.state.wi.us/grants))
- ⇒ Listings of CARS program funding sources (online at [www.dhfs.state.wi.us/bfs/CARS/index.htm](http://www.dhfs.state.wi.us/bfs/CARS/index.htm))

***Related topics:***

- ⇒ [Contract Front Matter](#) (for providing funding information)
- ⇒ [Article 18 “Records”](#)
- ⇒ [Article 19 “Reporting”](#)
- ⇒ [Article 21 “Revision or Termination of the Contract”](#)
- ⇒ [Article 22 “Services to be Provided”](#)
- ⇒ [Article 23 “Special Provisions for High Risk Contract”](#)

## Article 2 Caregiver Background Checks

The 1997-99 Biennial Budget (Wisconsin Act 27) included provisions requiring background and criminal history checks of certain personnel who are responsible for the care, safety and security of children and adults. The law also covers reporting and investigation requirements of claims of client abuse, neglect or misappropriation of property (caregiver misconduct).

<b>Contract Section</b>	<b>Notes</b>
<p><b>Article 2 Caregiver Background Checks</b> The Purchaser and the Provider agree that the protection of the clients served under this contract is paramount to the intent of this contract. In order to protect the clients served, the Provider shall comply with the provisions of <a href="http://www.legis.state.wi.us/rsb/code/index.html">HFS 12, Wis. Admin. Code</a> (online at <a href="http://www.legis.state.wi.us/rsb/code/index.html">http://www.legis.state.wi.us/rsb/code/index.html</a>)</p> <p><b>Section 2.1 Background checks</b> The Provider shall conduct caregiver background checks at its own expense of all employees assigned to do work for the Purchaser under this contract if such employee has actual, direct contact with the clients of the Purchaser. The Provider shall retain in its Personnel Files all pertinent information, to include a Background Information Disclosure Form and/or search results from the Department of Justice, the Department of Health and Family Services, and the Department of Regulation and Licensing, as well as out of state records, tribal court proceedings and military records, if applicable.</p> <p>After the initial background check, the Provider must conduct a new caregiver background search every four years, or at any time within that period when the Provider has reason to believe a new check should be obtained.</p>	

**Section 2.2 Records**

The Provider shall maintain the results of background checks on its own premises for at least the duration of the contract. The Purchaser may audit the Provider's personnel files to assure compliance with the [State of Wisconsin Caregiver Background Check Manual](#) (online at <http://www.dhfs.state.wi.us/caregiver/publications/CgvrProgMan.htm>).

**Section 2.3 Assignment of staff**

The Provider shall not assign any individual to conduct work under this contract who does not meet the requirement of this law.

**Section 2.4 Notification to Purchaser**

The Provider shall notify the Purchaser in writing and sent via registered mail within one business day if an employee has been charged with or convicted of any crime specified in [HFS 12.07\(2\)](#) (online at <http://www.legis.state.wi.us/rsb/code/index.html>)

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**Resources:**

- ⇒ Background and Guidance on Caregiver Program and on Caregiver Background Checks (online at <http://www.dhfs.state.wi.us/caregiver/>)
- ⇒ State of Wisconsin Caregiver Background Check Manual (online at <http://www.dhfs.state.wi.us/caregiver/publications/CgvrProgMan.htm>)
- ⇒ HFS 12 Caregiver Background Checks (online at <http://www.legis.state.wi.us/rsb/code/index.html>)

**Related topics:**

- ⇒ [Article 18 “Records”](#)
- ⇒ [Article 19 “Reporting”](#)

## Article 3 Civil Rights Compliance Plan

The Civil Rights Compliance Plan encompasses various requirements based on Federal and State law, including civil rights/equal employment, affirmative action, Americans with Disability Act (ADA), and limited English proficiency. The CRC Plan is online at <http://www.dhfs.state.wi.us/civilrights/Index.HTM>, and it is organized into separate sections for governments and for nonprofits and for-profits.

Contract Section	Notes
<b>Article 3 Civil Rights Compliance Plan</b> Provider shall comply with the requirements of the current Civil Rights Compliance (CRC) Plan, which is online at <a href="http://www.dhfs.state.wi.us/civilrights/Index.HTM">http://www.dhfs.state.wi.us/civilrights/Index.HTM</a> . Providers that have more than twenty-five (25) employees and receive more than twenty five thousand dollars (\$25,000) must develop and attach a Civil Rights Compliance Plan to this contract. Providers that have less than twenty five (25) employees or receive less than a total of twenty five thousand (\$25,000) dollars must develop and attach a Letter of Assurance to this contract.	For technical assistance, call the DHFS Affirmative Action and Civil Rights Compliance office at (608) 266-9372 (Voice), (608)266-2555 (TDD), <a href="mailto:durand@dhfs.state.wi.us">durand@dhfs.state.wi.us</a>

### Resources:

#### For cultural and linguistic competencies:

- ⇒ <http://www.lep.gov/>
- ⇒ <http://www.hhs.gov/ocr/>
- ⇒ <http://erc.msh.org/mainpage.cfm?file=1.0.htm&module=provider&language=English>
- ⇒ <http://www.georgetown.edu/research/gucdc/nccc/>

#### For disability accommodation:

- ⇒ <http://www.usdoj.gov/crt/ada/adahom1.htm>
- ⇒ <http://www.eeoc.gov/>
- ⇒ <http://www.access-board.gov/adaag/html/adaag.htm>, ADA Accessibility Guidelines (ADAAG) for facilities

- ⇒ <http://www.uic.edu/orgs/ada-greatlakes/> ADA regional expertise, University of Illinois
- ⇒ <http://www.jan.wvu.edu/> assistance in accommodations

**Additional resources:**

- ⇒ <http://cms.hhs.gov/medicaid/> for possible changes in the reimbursement of interpreters for Medicaid patients
- ⇒ <http://www.hhs.gov/ocr/hipaa/privacy.html> HIPAA
- ⇒ For technical assistance, call the DHFS Affirmative Action and Civil Rights Compliance office at (608) 266-9372 (Voice), (608)266-2555 (TDD), [durand@dhfs.state.wi.us](mailto:durand@dhfs.state.wi.us)



## Article 4 Client Funds

Many clients served by human service programs need help handling their funds, and either the Purchaser or the Provider could be responsible for providing this help. Some Purchasers decide that the inherent conflict of interest involved in providing direct client services and handling the client funds is so great that they will not allow Providers to do both. On the other hand, other Purchasers decide that doing both is all right when there are sufficient safeguards to prevent misuse of client funds. The contract should clearly state whether the Provider handles client funds, and if the Provider does have this responsibility, the safeguards the Provider needs to have in place.

### ***Situation #1 – Purchaser manages client funds***

<b>Contract Section</b>	<b>Notes</b>
<b>Article 4 Client Funds</b> All client funds shall be handled by the Purchaser. The Provider shall not handle client funds.	

### ***Situation #2 – Provider manages client funds***

<b>Contract Section</b>	<b>Notes</b>
<b>Article 4 Client Funds</b> When managing client funds, the Provider shall:  a. allow the client to use his or her own money as he or she wishes, unless the Purchaser specifically authorizes the Provider to withhold funds.  b. develop written policies and procedures for handling client funds.  c. develop a budget for each client and have the client or guardian sign it.  d. segregate the duties of people handling client funds so that the same person does not authorize payments and reconcile accounts.	

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| <ul style="list-style-type: none"><li>e. maintain written records of client funds.</li><li>f. provide each client with a monthly accounting for his or her funds, with a copy to the Purchaser, due 30 days after the end of the month.</li><li>g. maintain client funds in a separate, interest bearing account.</li><li>h. reconcile each client's account on at least a quarterly basis.</li><li>i. keep all records of client accounts for at least three years.</li><li>j. obtain bonds for all staff who handle client funds.</li><li>k. conduct background checks on all staff who handle client funds.</li></ul> |  |
|--|--|

**Resources:**

- ⇒ DSL Info Memo 2002-08 “Handling Client Funds – A Best Practices Guide” (online at [http://www.dhfs.state.wi.us/dsl\\_info](http://www.dhfs.state.wi.us/dsl_info))
- ⇒ Social Security Administrations’ *Guide for Organizational Representative Payees*, (online at <http://www.ssa.gov/payee/index.htm>)

**Related topics:**

- ⇒ [Article 2 “Caregiver Background Checks”](#)
- ⇒ [Article 18 “Records”](#)
- ⇒ [Article 19 “Reporting”](#)

## Article 5 Client Rights and Grievances

Wisconsin Statutes 51.61 and Administrative Code HFS 94, Patient Rights, define rights and grievance procedures for clients with a mental illness, a developmental disability, alcohol abuse or dependency, or other drug abuse or dependency. The purpose of this contract article is to ensure that a Provider of services to these individuals complies with the requirements for client rights and grievance resolution.

Contract Section	Notes
<p><b>Article 5 Client Rights and Grievances</b>  The Provider shall have a formal written grievance procedure that is approved by the licensing or certification authority, if applicable, and the Purchaser. The Provider shall, prior to or at the time of admission to the Program, provide oral and written notification to each client of his or her rights and the grievance procedure. The Provider shall post the client rights and the grievance procedure in an area readily available to clients and staff of the program.</p> <p><b>[optional paragraph]</b> The Provider shall give the Purchaser a written report for each grievance that is filed in writing against the Provider by any clients or their guardians. The Provider shall deliver these reports to the Purchaser in person or via registered mail within 5 business days of the Provider's receipt of the grievance. The Provider shall also inform the Purchaser in writing of the resolution of each grievance.</p> <p>At least once a year, or more frequently when requested by the Purchaser, the Provider shall give the Purchaser a written summary report of all grievances that have been filed with the Program by clients or their guardians since the period covered by the previous summary report and of the resolution of each grievance. The Provider shall deliver the annual summary report to the Purchaser in person or via registered mail within 30 days of the end of the</p>	<p>This paragraph is <u>optional</u>, and it might be appropriate in high risk situations, such as the Provider is new or the Provider has a history of grievances. When deciding whether to include this paragraph, Purchasers should consider whether they have adequate means of becoming aware of problems through other monitoring activities.</p> <p>This section requires the Provider to give the Purchaser at least an annual summary report of all grievances, and it gives the Purchaser the option of requesting such a summary at any time, such as contract renewal time and when the Purchaser hears of problems with the Provider.</p> <p>Some Purchasers review summary reports on grievances as part of the contract renewal process. Since they have the option of requiring a report at</p>

contract period. Additional summary reports requested by the Purchaser shall be due within 10 days of the Purchaser's request for the reports. All reports shall be delivered to the Purchaser in person or via registered mail.

any time, they can request one when they know this Provider's contract is being considered for renewal. In effect, they would then be receiving a summary report every six months or so, one at January 30 (most Providers have a calendar fiscal year) and another at mid year. An alternative to requesting an ad hoc summary at the time of contract renewal in addition to the annual summary report is to require the annual summary report to be provided at the time the Purchaser expects to begin the contract renewal process.

***Resources:***

- ⇒ Wisconsin Statutes 51.61 (online at <http://www.legis.state.wi.us/rsb/stats.html>)
- ⇒ Administrative Code HFS 94, Patient Rights (online at <http://www.legis.state.wi.us/rsb/code/index.html>)

***Related topics:***

- ⇒ [Article 10 "Eligibility"](#)
- ⇒ [Article 19 "Reporting"](#)

## Article 6 Conditions of the Parties' Obligations

<i>Contract Section</i>	<i>Notes</i>
<p><b>Article 6 Conditions of the Parties' Obligations</b></p> <p><b>Section 6.1 Contingency</b> This contract is contingent upon authorization of Wisconsin and United States laws and any material amendment or repeal of the same affecting relevant funding or authority shall serve to terminate this Agreement, except as further agreed to by the parties hereto.</p> <p><b>Section 6.2 Powers and Duties</b> Nothing contained in this contract shall be construed to supersede the lawful powers or duties of either party.</p> <p><b>Section 6.3 Items Comprising the Contract</b> It is understood and agreed that the entire contract between the parties is contained herein, except for those matters incorporated herein by reference, and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter thereof.</p>	

## Article 7 Confidentiality

<b>Contract Section</b>	<b>Notes</b>
<p><b>Article 7 Confidentiality</b></p> <p><b>Section 7.1 Client confidentiality</b></p> <p>The Provider shall not use or disclose any information concerning eligible clients who receive services from Provider for any purpose not connected with the administration of Provider's or Purchaser's responsibilities under this contract, except with the informed, written consent of the eligible client or the client's legal guardian.</p> <p><b>Section 7.2 Contract not confidential</b></p> <p>Except for documents identifying specific clients, the contract and all related documents are not confidential.</p>	

## Article 8 Conflict of Interest

<b><i>Contract Section</i></b>	<b><i>Notes</i></b>
<b>Article 8 Conflict of Interest</b> The Provider shall ensure the establishment of safeguards to prevent employees, consultants, or members of the board from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business, or other ties.	

## Article 9 Debarment and Suspension

Many of the services under purchase of service contracts are paid with federal funds. The federal government maintains a list of “excluded parties” that are debarred, suspended, proposed for debarment, or declared ineligible by a federal agency from participating in federal assistance programs. The prohibition on making subawards to debarred and suspended parties is addressed in the Grants Management Common Rule (HHS Codification – 45CFR92.35):

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.”

Debarment excludes individuals from participating in federal assistance programs. Suspension temporarily excludes individuals while debarment action is being processed. Causes for debarment include the following:

- Conviction of or a civil judgment for:
  - fraud or a criminal offense in connection with an agreement or transaction
  - violation of a federal or state antitrust statute
  - embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, receiving stolen property, false claims
  - obstruction of justice
  - any offense that shows a lack of business integrity or honesty that seriously and directly affects the individual’s responsibility
- Violation of the terms of a public agreement or transaction
- Doing business with a debarred, suspended, or ineligible person
- Failure to pay certain substantial outstanding debts
- Violation of a voluntary exclusion agreement
- Any other cause so serious that it affects the individual’s responsibility

Purchasers should check the Excluded Parties Listing System (EPLS, online at <http://epls.arnet.gov>) to find out whether their Providers or the principals of their Providers are on this list. However, Purchasers should also require Providers to certify that they and their principals have not been suspended or debarred. In addition, Purchasers should require Providers to notify the Purchasers if their status changes during the contract.

If the federal government debars or suspends a Provider during the period of the contract, the Purchaser might be able to allow the Provider to finish the current contract. The Purchaser can consider changes for high risk contract ([Article 23](#)) or revising or terminating the contract ([Article 21](#)). Or, Purchasers might be able to switch funding to state or county money, so that no federal funding is being used for the contract. Purchasers should check with their legal counsel on steps to take when learning the federal government has debarred or suspended a Provider.



Contract Section	Notes
<b>Article 9 Debarment and Suspension</b> The Provider certifies through signing this contract that neither the Provider nor any of its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in federal assistance programs by any federal department or agency. In addition, the Provider shall notify the Purchaser within five business days in writing and sent by registered mail if the Provider or its principals receive a designation from the federal government that they are debarred, suspended, proposed for debarment, or declared ineligible by a federal agency. The Purchaser may consider suspension or debarment to be cause for implementing high risk contract provisions under <a href="#">Article 23 “Special conditions for high risk contract”</a> or for revising or terminating the contract under <a href="#">Article 21 “Revision or termination of the contract.”</a>	

**Resources:**

- ⇒ Federal Acquisition Regulation, Subpart 9.4 - Debarment, Suspension, and Ineligibility (online at <http://www.arnet.gov/far/loadmainre.html>) The FAR includes a detailed discussion of suspension and debarment.
- ⇒ Excluded Parties Listing System (EPLS, online at <http://epls.arnet.gov>)

**Related topics:**

- ⇒ [Article 19 “Reporting”](#)
- ⇒ [Article 21 “Revision or Termination of this Contract”](#)
- ⇒ [Article 23 “Special Conditions for High Risk Contract”](#)

## Article 10 Eligibility

A program may or may not have an eligibility requirement as one of the “strings” associated with federal or state funding on who the program is intended to serve. The contract should show whether the program has an eligibility requirement and who is responsible for determining eligibility. The contract should also address responsibility for ensuring that clients are aware of their rights if they are determined to not be eligible.

### ***Situation #1 – No eligibility requirement***

<b><i>Contract Section</i></b>	<b><i>Notes</i></b>
<b>Article 10 Eligibility</b> There are no eligibility requirements for the services being purchased under this contract.	

### ***Situation #2 – Purchaser determines eligibility***

<b><i>Contract Section</i></b>	<b><i>Notes</i></b>
<b>Article 10 Eligibility</b> The Provider shall provide services only to individuals who are eligible for services. The Provider and Purchaser agree that the eligibility of individuals to receive the services to be purchased under this Agreement from the Provider will be determined by the Purchaser.  An individual has a right to an administrative hearing concerning eligibility and the Purchaser shall inform individuals of this right. The Provider shall provide clients with information concerning their eligibility and how to appeal actions affecting their rights.	Include the paragraph on administrative hearing if administrative hearing is a requirement for the program. Modify the language as needed for the nature of the appeal, such as “fair hearing” instead of “administrative hearing.”

### ***Situation #3 – Provider determines eligibility***

<b>Contract Section</b>	<b>Notes</b>
<p><b>Article 10 Eligibility</b></p> <p>The Provider shall provide services only to individuals who are eligible for services. The Provider shall determine eligibility of individuals to receive the services to be purchased under this Contract in conformity with the following standards:</p> <ul style="list-style-type: none"><li>• [list eligibility standards, required documentation and any reporting requirements here]</li></ul> <p>An individual has a right to an administrative hearing concerning eligibility and the Purchaser shall inform individuals of this right. The Provider shall provide clients with information concerning their eligibility rights and how to appeal actions affecting those rights.</p>	<p>Include the paragraph on administrative hearing if administrative hearing is a requirement for the program. Modify the language as needed for the nature of the appeal, such as “fair hearing” instead of “administrative hearing.”</p>

***Resources:***

- ⇒ Purchaser’s grant agreement or contract with its granting agency for the funding used for this service

***Related topics:***

- ⇒ [Article 6 “Client Rights and Grievances”](#)
- ⇒ [Article 19 “Reporting”](#)

## **Article 11 Health Insurance Portability and Accountability Act of 1996 “HIPAA” Applicability**

### **1) Why is the section on HIPAA important?**

The federal Health Insurance Portability and Accountability Act (HIPAA) mandates the standardization of certain electronic health administration transactions and the protection of patient health information. As covered entities under HIPAA or as business associates of covered entities, counties and tribes must comply with or are affected by HIPAA requirements. Some of these requirements are implemented through the contractual language of covered entities when purchasing services. HIPAA can impact contracts for human services delivery to clients as well as contracts for administrative services. Contracts for human service delivery may be impacted if payment is through electronic claims. Contracts for administrative services may need to include requirements on how protected health information is handled.

### **2) How does HIPAA affect contracts for human service delivery?**

The primary use of the Model Purchase of Service Contract is as a guide for contracts that purchase human services delivered to clients. If the county or tribe is acting as a health plan (or business associate of a health plan) in receiving and paying client-specific electronic claims from a Provider for health care services, these transactions must be conducted according to HIPAA standards. (One example is where the county or tribe, as a DHFS business associate, is conducting electronic claim or payment transactions with a Provider in the Home and Community Based Waiver (HCBW) services programs.) The contract should state this mandate and require the Provider's compliance with payer-specific requirements which can be contained in an attached trading partner agreement and/or companion guide and referenced in the contract.

### **3) How does HIPAA affect contracts for administrative services?**

Although not the primary purpose of the Model Purchase of Service Contract, it may also be used as a guide for contracts that purchase administrative services. If these services are done on behalf of the county or tribe in their role as a covered health plan or Provider and the services involve use of protected health information, then the Provider may be a business associate. Use the referenced Business Associate Analysis Flowchart to make this determination for most situations. In especially ambiguous cases you will need to consult legal counsel. Where the Provider is a business associate, the contract should require the Provider to sign an attached business associate agreement that specifies how protected health information will be handled.

If the administrative services the county or tribe is contracting for are to assist in the fulfillment of its duties as a business associate (such as for the HCBW programs), then the contract with the Provider may be affected. If the Provider will use protected health information in performing the contracted services, then the contract must hold the Provider to the same restrictions and conditions on use of protected health information (PHI) that apply to the county or tribe.

Whether the county or tribe is contracting as a covered entity or as a business associate (such as for the HCBW programs), if the contracted administrative services are performed electronically and involve any of the standard HIPAA transactions, the contract should also require that these be conducted according to HIPAA standards.

**4) What if the contract is for both treatment and administrative services?**

A county or tribe that is a covered entity or business associate might contract with one or more Provider organizations to provide both human services (treatment in HIPAA terms) and administrative services such as billing or quality assurance. In this case an organized health care arrangement (OHCA) might apply. An OHCA is an alternative to business associate relations in some situations. Legal counsel should be consulted before implementing this arrangement.

**5) Can I simply attach the Business Associate amendment to all contracts?**

This is not necessary and may not be advisable. The business associate agreement, and related language in the contract, should only be used when the Provider is using protected health information to provide relevant administrative services on behalf of the county or tribe that is a covered entity under HIPAA. If the contract is for the provision of human services the Provider is not a business associate and no contractual or agreement language governing the use of PHI is required by HIPAA. HIPAA allows the county or tribe as a covered entity to share protected health information with Providers of health care services for treatment and payment purposes. HIPAA does not prohibit use of a business associate agreement for treatment Providers, but it is not necessary. Contractually requiring a Provider to comply with HIPAA when HIPAA does not require it could unnecessarily establish responsibility of the county or tribe for the behavior of the Provider.

<b>Contract Section</b>	<b>Notes</b>
<b>Article 11 Health Insurance Portability and Accountability Act of 1996 “HIPAA” Applicability</b> <b>Section 11.1 General Applicability</b> The Provider agrees to comply with the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the extent those regulations apply to the services the Provider provides or purchases with funds provided under this contract.  <b>Section 11.2 Business Associate Agreement</b> In addition, certain functions included in this agreement are covered by HIPAA rules. As such the Purchaser must comply with all provisions of the law and has determined that Provider is a “Business Associate” within the context of the law. As a result, the Purchaser requires Provider to sign and return with this	<p>Include this paragraph in all contracts.</p>  <p>If the Purchaser is a covered entity (or health care component of a hybrid entity) and has determined that the Provider is a business associate of the Purchaser:</p> <ul style="list-style-type: none"><li>• include this paragraph and</li><li>• attach the Business Associate Agreement.</li></ul>

contract the Business Associate Agreement, which will be included and made part of this agreement.

### **Section 11.3 Agreement on Provider Use of PHI**

In providing certain administrative services the Purchaser is a business associate of [name the covered entity] under HIPAA and must comply with an agreement on its use of protected health information (PHI). Consistent with that agreement, the Provider agrees to comply with the same restrictions and conditions on PHI that apply to the Purchaser. These restrictions apply to PHI received by the Provider from the Purchaser and to PHI created or received by the Provider on behalf of the Purchaser. The restrictions and conditions are appended to this contract in the form of an Agreement on Provider Use of PHI.

### **Section 11.4 Billing and Collection Procedures**

Purchaser and Provider must conduct any electronic health care administrative transactions covered by the Health Insurance Portability and Accountability Act consistent with the Electronic Transactions and Code Sets Rule. Provider agrees to conduct any such electronic transactions according to the Trading Partner Agreement and any associated Companion Guides appended to this contract.

If the purchased services are administrative, performed on behalf of the Purchaser in fulfilling their business associate responsibilities, and involve use of PHI:

- include this paragraph and
- attach the Agreement on Provider Use of PHI

Do not use this language and Agreement if the purchased services are for human service delivery ("treatment" in HIPAA terms).

If the Provider will electronically bill or conduct any of the other electronic transactions covered by HIPAA with the Purchaser:

- include this paragraph, and
- attach the Trading Partner Agreement, and any Companion Guides, to establish technical and other Purchaser-specific requirements.

#### *Resources:*

- ⇒ Sample BAA (see the DHFS HIPAA NOW website at [www.dhfs.state.wi.us/HIPAA/](http://www.dhfs.state.wi.us/HIPAA/))
- ⇒ Business Associate Analysis Flowchart (see the DHFS HIPAA NOW website at [www.dhfs.state.wi.us/HIPAA/](http://www.dhfs.state.wi.us/HIPAA/))
- ⇒ Trading Partner Agreement sample (see the Medicaid website at [www.dhfs.state.wi.us/medicaid9/index.htm](http://www.dhfs.state.wi.us/medicaid9/index.htm))
- ⇒ Companion Guide sample (see the HIPAA COW website at [www.hipaacow.org](http://www.hipaacow.org), and the Medicaid website at [www.dhfs.state.wi.us/medicaid9/index.htm](http://www.dhfs.state.wi.us/medicaid9/index.htm))
- ⇒ Agreement for Provider Use of PHI (see the DHFS HIPAA NOW website at [www.dhfs.state.wi.us/HIPAA/](http://www.dhfs.state.wi.us/HIPAA/))
- ⇒ Questions? Address questions to the HIPAA Questions/Feedback on the DHFS HIPAA NOW website at [www.dhfs.state.wi.us/HIPAA/fdback/feedback.htm](http://www.dhfs.state.wi.us/HIPAA/fdback/feedback.htm)

## Article 12 Indemnity and Insurance

Your corporation counsel, risk manager, and insurer can help you decide what types of insurance and how much coverage to require. However, what other counties are requiring may be useful information, and the amounts shown in the contract language for this article are from a survey of actual county practices. These counties indicated that Providers generally are able to obtain the levels of insurance that are being required in their contracts.

The model contract requires the Provider to have its insurer give the county a “Certificate of Insurance.” The “Certificate of Insurance” is a standard form used by the insurance industry, and it is prepared by the insurer or insurance agent. The certificate includes the name and address of the producer (the insurance agent), the names of the underwriters, the types of coverage, the amounts of coverage, the policy numbers, and the dates that the policies are in effect.

The model contract also requires that the insurance company be licensed by the State of Wisconsin. The Office of the Commissioner of Insurance maintains records of agents and insurance companies licensed by the State of Wisconsin. You can check OCI’s website at [www.oci.wi.gov](http://www.oci.wi.gov) to find out whether a company is licensed in the State of Wisconsin.

The OCI website also includes a list of “unauthorized insurers” (insurers not licensed in Wisconsin) but acceptable for offering surplus lines insurance. Surplus lines insurance does have to comply with most insurance laws and is offered through insurance agents licensed as surplus lines agents, sometimes called brokers. Surplus lines insurance is allowed in Wisconsin and provides coverage for entities that cannot find insurance in the standard market. Surplus lines insurance will be specified through the insuring contract. It is important to read and understand the surplus lines contract and develop a level of business-comfort with the surplus lines agent.

<b>Contract Section</b>	<b>Notes</b>
<b>Article 12 Indemnity and Insurance</b> <b>Section 12.1 Indemnity</b> The Provider agrees that it will at all times during the existence of this Contract indemnify the Purchaser against any and all loss, damages, and costs or expenses which the Purchaser may sustain, incur, or be required to pay including those arising from death, personal injury, or property loss resulting from participating in or receiving the care and services furnished by the Provider under this Agreement. However, the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused by the Purchaser.	Your attorney should check this paragraph.

### Section 12.2 Insurance

The Provider agrees that, in order to protect itself as well as the Purchaser under the indemnity provision set forth in the above paragraph, the Provider will at all times during the terms of this Contract keep in force a liability insurance policy issued by a company authorized to do business in the State of Wisconsin and licensed by the Office of the Commissioner of Insurance. The types of insurance coverage and minimum amounts shall be as follows:

- Comprehensive General Liability: minimum amount \$1,000,000
- Auto Liability (if applicable): minimum amount \$1,000,000
- Professional Liability (if applicable): minimum amount \$1,000,000 per occurrence and \$3,000,000 for all occurrences in one (1) year.
- Umbrella Liability (as necessary): minimum amount \$1,000,000

Provider acknowledges that its indemnification liability to Purchaser is not limited by the limits of this insurance coverage.

Upon signing this Contract, Provider will furnish Purchaser with a "Certificate of Insurance" verifying the existence of such insurance. In the event of any action, suit, or proceedings against Purchaser upon any matter indemnified against, Purchaser shall notify the Purchaser by registered mail within five business days.

This paragraph allows only licensed insurers. When the insurance marketplace provides a lot of choice, licensed insurance companies will be available for many risks. In that situation, a requirement for only licensed insurers is okay. At other times and for certain types of services, licensed insurers might not be available. At those times, a contract like this one that excludes surplus lines insurers will inhibit Providers from complying with this contract provision.

In difficult insurance times or for specific coverages, the Purchaser might find it advantageous to allow a different contract that allows for surplus lines carriers listed on the OCI unauthorized insurer list. You should discuss options with your legal counsel and risk manager.

### Resources:

⇒ Office of the Commissioner of Insurance (online at <http://oci.wi.gov/>)



## Article 13 Independent Contractor

<i>Contract Section</i>	<i>Notes</i>
<b>Article 13 Independent Contractor</b> Nothing in this contract shall create a partnership or joint venture between the Purchaser and the Provider. The Provider is at all times acting as an independent contractor and is in no sense an employee, agent or volunteer of the Purchaser.	

## Article 14 License, Certification, and Staffing

The Purchaser must ensure that Providers meet the applicable license and certification standards.

<b>Contract Section</b>	<b>Notes</b>
<p><b>Article 14 License, Certification, and Staffing</b></p> <p><b>Section 14.1 License and Certification</b></p> <p>The Provider shall meet state and federal service standards and applicable state licensure and certification requirements as expressed by state and federal rules and regulations applicable to the services covered by this contract. The Provider shall attach copies of its license or certification document and the most recent licensing or certification report concerning the Provider to this contract when returning the signed contract to the Purchaser. During the contract period, the Provider shall also send the Purchaser copies of any licensing inspection reports within 5 business days of receipt of such reports.</p> <p><b>Section 14.2 Staffing</b></p> <p>The Provider shall ensure that staff providing services are properly supervised and trained and that they meet all of the applicable licensing and certification requirements.</p>	

**Resources:**

- ⇒ License and Certification standards in Wisconsin Statutes and Administrative Rules applicable to the Provider's entity type

**Related topics:**

- ⇒ [Article 19 "Reporting"](#)

## Article 15 Liquidated Damages

Liquidated damages compensate the Purchaser for losses incurred if the Provider does not fulfill the terms of the contract. Liquidated damages are consistent with the intent of the contract, in which two independent parties are mutually striving to achieve important, positive public goals. Properly constructed, liquidated damages are likely to be upheld in court. Alternatively, penalty provisions are viewed as punitive actions, and are unlikely to be upheld in court.

A liquidated damages provision requires the Provider to compensate the Purchaser for damages incurred by the Purchaser in event the Provider does not fulfill the terms of the contract. When setting the liquidated damages, it has to be for a performance failure that would cause **actual** damages and in an amount that would be a **reasonable forecast** of the harm that would occur by the nonperformance.

You should consult with your legal staff about establishing liquidated damages through the contract and the procedures for collecting on these damages to ensure that the liquidated damages provision will be upheld in court.

You set liquidated damages in a contract if the actual damage would be difficult to measure, so the parties agree up front what the compensation would be. Liquidated damages are not needed for a nonperformance that creates easily measurable damages (e.g., walking off a job so that a replacement contractor is hired – the cost difference between the two contracts is obvious so the needed compensation for your harm is easily determinable). If liquidated damages are set too high for the likely actual damages, they will be considered a penalty and unenforceable.

There are cases that hold the inconvenience to the public in delays or failure to perform is an actual damage that would justify the levying of liquidated damages. This could be a delay in providing contract services to the clients the program serves, a failure to correctly determine benefits for those clients, or a delay or failure to provide reports necessary for Purchaser to obtain funds from its funding source.

The amount of a liquidated damage associated with non-performance by the Provider that is included in a contract should reasonably relate to the harm that the Purchaser would incur as a result of non-performance. This estimate of course involves some “guesstimating,” but if the amount is reasonable, if it can be related to a harm the Purchaser may incur as a result of non-performance, and if both parties agree, then the liquidated damage amount probably would be upheld in court. The damages are expressed in an amount per day, for a maximum number of days.

### *Key points:*

- ⇒ Both parties agree to the amount of the liquidated damages up front when entering into the contract.
- ⇒ The amount is a reasonable estimate of the actual damages that the Purchaser would incur if the Provider does not fulfill the terms of the contract



Purchaser will provide the Provider with written notice of its intent to impose liquidated damages and shall provide the Provider with [\* \_\_\_\_\*] calendar days to correct. If the Provider fails to correct, the Provider shall pay [\* \$\_\_\_\_\*] for each day the failure remains uncorrected.

**[Option #2]** If the Purchaser determines that [\* specify delay or failure\*] has occurred, the Purchaser may assess liquidated damages. The Purchaser will provide the Provider with a written notice of assessment and the Provider shall pay [\* \$\_\_\_\_\*] for [\*each failure that occurred\*] or [\*for each day that the failure or delay occurred\*].

#### **Section 15.2 Payment of Liquidated Damages**

Amounts due the Purchaser as liquidated damages may be deducted by the Purchaser from any money payable to Provider under this contract, or the Purchaser may bill the Provider as a separate item and the Provider shall immediately make payments on such bills.

If the delay or failure causes the Purchaser to terminate this contract in whole or in part, the Provider remains liable for liquidated damages until the time the Purchaser may reasonably obtain performance of similar services.

Use this paragraph if the Purchaser does not give the Provider an opportunity to correct.

#### **Related topics:**

⇒ [Article 21 “Revision or Termination of the Contract”](#)

## Article 16 Matching, Level of Effort, and Earmarking

Programs may or may not have matching, level of effort, or earmarking requirements. A requirement for matching, level of effort, or earmarking is more likely with a cost reimbursement payment method than it is with a unit-times-unit-price or other payment method.

*Matching or cost sharing* includes requirements to provide contributions (usually non-federal) of a specified amount or percentage to match federal awards. Matching may be in the form of allowable costs incurred or in-kind contributions, including third-party in-kind contributions.

*Level of effort* includes requirements for three situations: (a) a specified level of service is to be provided from period to period, (b) a specified level of expenditures for specified activities is to be maintained from period to period, and (c) funds are to supplement and not supplant other funding of services.

*Earmarking* includes requirements that specify the minimum and/or maximum amount or percentage of the program's funding that must/may be used for specified activities, including funds provided to subrecipients. Earmarking may also be specified in relation to the types of participants covered.

Matching, level of effort, and earmarking requirements must:

- Be verifiable from the Purchaser's records.
- Not be included as contributions for any other federally-assisted project or program, unless specifically allowed by federal program laws and regulations.
- Be necessary and reasonable for proper and efficient accomplishment of project or program objectives.
- Be allowed under the applicable cost principles.
- Not be paid by the federal government under another award, except where authorized by federal statute to be allowable for cost sharing or matching.
- Be provided for in the approved budget when required by the Purchaser.
- Be in conformance with other applicable provisions of the A-102 Common Rule and OMB Circular A-110 and the laws, regulations, and provisions of contract or grant agreements applicable to the program.

***Situation #1 – No requirement for matching, level of effort, or earmarking***

<b>Contract Section</b>	<b>Notes</b>
<b>Article 16 Matching, Level of Effort and Earmarking</b> No matching, level of effort, or earmarking requirement.	

***Situation #2 – Provider must comply with a matching requirement***

<b>Contract Section</b>	<b>Notes</b>
<b>Article 16 Matching, Level of Effort and Earmarking</b> The Provider must provide a 50% match for funds earned under this contract. For example, in order to earn \$100.00 under this contract, the Provider must have \$150.00 in allowable expenditures.  The source of the funds used for match cannot be federal or state programs or other programs from this Purchaser, unless expressly permitted by the funding source. All expenditures claimed for match must meet the standards for allowability in the <i>Allowable Cost Policy Manual</i> (online at <a href="http://www.dhfs.state.wi.us/grants">www.dhfs.state.wi.us/grants</a> ) and be supported by the Provider's records. The Provider shall include all expenditures claimed for match on the monthly cost reimbursement report.	The example assumes a 50% match requirement; contract writers will need to modify this to reflect the program requirements.

***Situation #3 – Provider must comply with a level of effort requirement***

<b>Contract Section</b>	<b>Notes</b>
<b>Article 16 Matching, Level of Effort and Earmarking</b> The Provider must use funds provided under this contract to supplement, and not supplant, what it would otherwise spend on the program. The Provider must have records showing an increase	This example is for the situation where the level of effort requirement is expressed as “supplement, not supplant.”

in level of services in proportion to the amount of funding provided through this contract. All expenditures supporting this requirement must meet the standards for allowability in the <i>Allowable Cost Policy Manual</i> (online at <a href="http://www.dhfs.state.wi.us/grants">www.dhfs.state.wi.us/grants</a> ) and be supported by the Provider's records.	
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### ***Situation #4 – Provider must comply with an earmarking requirement***

<b>Contract Section</b>	<b>Notes</b>
<b>Article 16 Matching, Level of Effort and Earmarking</b> At least .....% of expenditures under this contact must be targeted to services for ..... All expenditures supporting this requirement must meet the standards for allowability in the <i>Allowable Cost Policy Manual</i> (online at <a href="http://www.dhfs.state.wi.us/grants">www.dhfs.state.wi.us/grants</a> ) and be supported by the Provider's records.	Modify the example as needed to suit the specific conditions.

#### ***Resources:***

- ⇒ Purchaser's grant agreement or contract with its granting agency for the funding used for this service
- ⇒ *Allowable Cost Policy Manual* (online at [www.dhfs.state.wi.us/grants](http://www.dhfs.state.wi.us/grants))
- ⇒ OMB Circular A-102 "Grants and Cooperative Agreements with State and Local Governments," (online at (<http://www.whitehouse.gov/omb/circulars/a102/a102.html>))
- ⇒ OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," (online at <http://www.whitehouse.gov/omb/circulars/a110/a110.html>)

#### ***Related topics:***

- ⇒ [Article 17 "Payment and allowable costs"](#)
- ⇒ [Article 18 "Records"](#)
- ⇒ [Article 19 "Reporting"](#)



## Article 17 Payment and Allowable Costs

Most Purchasers are using one of three payment methods when contracting with Providers:

- Unit-times-unit-price, with limited profit or reserves
- Units-times-unit-price (pure fee for service)
- Reimbursement of allowable costs

Guidance on establishing unit prices or rates for services is a complex issue beyond the scope of this document. The Purchaser should have a policies and procedures to give it reasonable assurance that the prices or rates agreed to in the contract are reasonable. If the factors and assumptions underlying those rates change substantially, the Purchaser may seek to revise the rates or terminate the contract under [Article 21](#).

*Unit-times-unit-price with limited profit or reserves* is a variation of a cost-based contract under Wis. Stat. 46.036(3)(b), which allows Purchasers to make payments to Providers on the basis of actual allowable costs up to the contract maximum. Payments throughout the period are made on a unit-times-unit-price basis, and final settlement brings the payment to an actual allowable cost basis plus limited profit or reserve. A unit-times-unit-price basis with limited profit or reserve can be high risk if the Purchaser does not have a method to ensure that the final settlement is based on allowable costs. In many cases, an audit will be needed to determine the actual final payment that is earned under the contract.

*Units-times-unit-price (pure fee for service)* is one of the methods of payment allowed by Wis. Stat. 46.036(3)(b), which allows Purchasers to make payment on the basis of a unit rate per client service multiplied by actual client units furnished each month, up to the contract maximum. Under a unit-times-unit-price system, the Provider and the granting agency decide on a per unit price for the service, the Provider reports the number of units of service to the granting agency, and the granting agency pays the Provider for the number of units items the price per unit. A unit-times-unit-price method can have high risk if the granting agency does not have means of ensuring that the unit price is reasonable and that the number of units the Provider claims to have supplied is accurate. However, if the Purchaser is confident that the price is reasonable and controls the units of service, an audit is not likely to be needed..

*Reimbursement of allowable costs* is one of the payment methods authorized under Wis. Stat. 46.036(3)(b), which allows Purchasers to make payments to Providers on the basis of actual allowable costs, up to the contract maximum. In a cost-based contract, the Provider reports costs to the granting agency, who reimburses the costs.

A cost-based contract can have high risk if the granting agency does not have means of ensuring that the Provider is claiming only allowable costs for reimbursement. Some of the risks of inappropriate payments for a cost-based contract include unallowable costs resulting from conditions such as inaccurate cost reports, misallocation of costs or cost shifting, lack of approval for costs, inappropriate or unnecessary items and lack of documentation for costs.

Under cost reimbursement contracts, for-profit Providers are eligible for earning profit; however, non-profit Providers are not eligible for reserve. An audit will probably be necessary to ensure that costs that the Provider reports for reimbursement and that the profit for for-profit Providers are allowable.

## Situation #1 - Unit-times-unit-price with limited profit or reserves

Contract Section	Notes
<p><b>Article 17 Payment and Allowable Costs</b></p> <p><b>Section 17.1 Amount paid under contract</b> The maximum payment under this contract is [.....] Actual total payment will be based upon the amount of service authorized by the Purchaser and the amount of service performed by Provider. It is understood and agreed by all parties that the Purchaser assumes no obligation to purchase from the Provider any minimum amount of services as defined in the terms of this contract.</p> <p><b>Section 17.2 Basis for payments</b> Payments for services covered by this contract shall be based on allowable costs with limited profit or reserve. Monthly payments will be made a unit-times-unit-price basis and in accordance with the “order of payment” requirements for the funding program, less client fees and other collections made by the Provider for services covered by this contract. Final settlement of the contract will be based on audit. (See <a href="#">Article 1 “Audit”</a>)</p> <p><b>Section 17.2.1 Units and prices</b> - The units and prices for each service purchased from the Provider are included in the following table:</p> <p>[Insert unit and price info – see table at the end of this section for an example]</p> <p>The Purchaser shall determine the type of services provided and the number of units of services provided for each client. Units and prices may be re-negotiated. The Purchaser will not reimburse the Provider for any unit of service not previously authorized by the Purchaser.</p>	<p>Wis. Stat. 46.036(3)(a) requires the total dollar amount to be purchased to be included in the contract.</p> <p>Some Purchasers make all collections themselves. If this is your practice, leave off the “less client fees...” phrase so that this section just says “Monthly payments will be made on a unit-times-unit-price basis and in accordance with the “order of payment” requirements for the funding program. Final settlement of the contract will be based on audit.”</p> <p>Delete the sentence “Final settlement of the contract will be based on audit.” if you have waived the audit. However, you should make sure you have a way to monitor the profit and reserve.</p> <p>Wis. Stat. 46.036(3)(a) requires the following information to be in the contract:</p> <ul style="list-style-type: none"> <li>✓ Total amount to be purchased</li> <li>✓ For each service, number of clients to be served</li> <li>✓ Number of client units</li> <li>✓ Unit rate per client</li> <li>✓ Total dollar amount for each service</li> </ul> <p>The table at the end of this section shows one way to relay this information in the contract. Purchasers can modify the format to suit their needs.</p>

(See [Article 21 “Revision or Termination of the Contract”](#) and [Article 22 “Services to be Provided”](#))

**Section 17.2.2 Profit or reserves** - The Purchaser allows the Provider to have profit (for-profit Providers only) or reserve (non-profit Providers only). The profit and reserve are limited by expenditures on allowable costs that the Provider incurs in performing the services purchased under this contract. Allowable costs, profit, and reserve are defined in the *Allowable Cost Policy Manual* (online at <http://www.dhfs.state.wi.us/grants/Administration/ACPM.HTM>).

**Section 17.2.3 Client fees and third party collections [Option #1]**

The Provider shall bill clients for a portion of the cost of care, in conformance with the requirements of HFS 1 and using the uniform schedule of fees and policies supplied by the Purchaser.

The Provider shall bill responsible third parties for the cost of care.

All amounts collected from clients and third parties shall be supported by the Provider’s records and shall be reported to the Purchaser [..... specify format and timing.....] (See [Article 18 “Records”](#) and [Article 19 “Reporting.”](#))

**Section 17.2.3 Client fees and third party collections [Option #2]**

The Purchaser is responsible for all billing and collection for amounts due from clients and third parties. The Provider shall not collect any funds from clients or from third parties.

**Section 17.2.4 Audit** - The amount earned under this contract shall be confirmed through

Some Purchasers include client names in contract documents, and others do not on the principle that the contract is a public document and client names are confidential information. We recommend using just the number of clients in the contract.

Each SPC or HIPAA code should crosswalk to the services to be provided that are described in [Article 22 “Services to be Provided.”](#)

Wis. Stat. 46.036(3)(c) allows profit for for-profits. Profit is defined in the *Allowable Cost Policy Manual*.

Wis. Stat. 46.036(5m) allows reserve for non-profits that are paid on a prospectively set rate.

Purchasers can specify lower levels of profit or reserve than defined in the ACPM and the statute. However, you need to balance this limitation against the Provider’s ability to remain a viable business, which may be jeopardized if the Provider can’t make a reasonable profit or retain a reserve.

Wis. Stat. 46.036(4)(e) indicates that a uniform schedule of fees shall be charged to clients, but gives the option for having the Provider or someone else make the billings. The statute also indicates that any amount the Provider collects shall offset payments under the contract.

Option #1 – Use the language at left if the Purchaser chooses to have the Provider make billings to clients or third parties

Option #2 – Use the language at left if the Purchaser chooses to do all billings itself or through a service agency.

An audit is probably going to be necessary to confirm that the amount paid under the contract is correct.

an annual audit (see Article 1 “Audit”). For-profit Providers shall include a schedule in their audit reports showing the total allowable costs and the calculation of the allowable profit by contract or by service category. Non-profit Providers shall include a Reserve Supplemental Schedule (Section 7.1.6 of the *Provider Agency Audit Guide*) in their audit reports, and this schedule shall also be by contract or service category.

### **Section 17.3 Advance and surety bond**

**Section 17.3.1 Payment of the advance** - As soon as possible after the contract is signed by both parties, the Purchaser shall make an advance to the Provider in the amount of 1/12<sup>th</sup> of the maximum dollar amount to be paid under this contract.

**OR**

**Section 17.3.1 Payment of the advance** – The Purchaser shall make an advance payment in each of the first three months. Each payment will be in the amount of 1/12<sup>th</sup> of the maximum dollar amount to be paid under this contract.

**Section 17.3.2 Surety bond** - The Provider shall supply a Surety Bond. The Surety Bond must be for an amount at least equal to the amount of the advance payment and must accompany the signed contract that is returned to the Purchaser. The insurer issuing the surety bond must be licensed to conduct surety business in Wisconsin. The insurer shall use a bond form acceptable to the Purchaser.

**Section 17.3.3 Recoupment of the advance** - The advance will be recouped during the last three months of the contract period, or when payments made under the contract equal or exceed seventy-five percent of the contract amount. A final cash adjustment will be done

Leave this section out if you have waived the audit, but you should make sure you have another way to monitor profit and reserve.

Currently, the *Provider Agency Audit Guide* does not require a schedule showing profit for a for-profit. However, such a schedule is useful for showing the allowable profit, and Purchasers can require one by contract.

Reserves are allowable for non-profits under this payment method since payments are on the basis of a prospectively set rate. The Reserve Supplemental Schedule is required under the *Provider Agency Audit Guide*, but the Guide does not specify the level at which the information is to be presented, and Purchasers can specify this in the contract.

Wis. Stat. 46.036(3)(f) allows Purchasers to give Providers advances up to one-twelfth of an annual contract, and it requires a surety bond if the advance payment exceeds \$10,000. Whether to allow advances and the number of advances to allow will depend on the length of time for the billing cycle. The language shown in the first version of Section 17.3.1 is for a situation where the billing cycle is relatively short, so there is a need for only one advance. The second example is for a situation where the billing cycle is longer, warranting additional advances.

Leave this entire section on advance and surety bond out of the contract if there is no advance.

Leave the surety bond provision out of the contract if a surety bond isn't required.

If you do require a surety bond, have your legal counsel or risk manager review the surety bond that you receive from the Provider to ensure that it meets your needs.

If the Purchaser gives the Provider an advance, it also needs to recoup the advance. One method to do this is to monitor payments and start takebacks when agency reached a certain point, say three quarters of the way through the contract period or amount. Modify the contract section on recoupment as needed to reflect your business practice.

after reconciliation of the Contract amounts to actual final reported expenses.

#### Section 17.4 Reporting for payment

Each month, the Provider shall report the units of service provided during the month on the forms provided by the Purchaser. All information reported to the Purchaser shall be supported by the Provider's records. The report is due to the Purchaser on the 15<sup>th</sup> day following the end of the report month. If the Provider's report is complete and timely, the expected payment date is the 30<sup>th</sup> day following the end of the report month. (See [Article 18 "Records"](#) and [Article 19 "Reporting."](#))

#### Section 17.5 Payment in excess of earned amount

The Provider shall return to Purchaser any funds paid in excess of the amount earned under this contract within 90 days of the end of the contract period. If the Provider fails to return funds paid in excess of the amount earned, the Purchaser may recover the excess payment from subsequent payments made to the Provider or through other collection means.

The Purchaser makes modifications as needed to reflect its policy on reporting frequency, form name/number, due dates, and expected payment dates.

Wis. Stat. 46.036(5) indicates that the Purchaser shall recover payments in excess of the earned amount from subsequent payments made to the Provider. "Other collection means" should be included in the contract in case there aren't subsequent payments to collect from.

### Units and Prices (see Section 17.2.1)

SPC or HIPAA code for service	Service	No. of clients (a)	Client service units (b)	Rate/unit (excluding room & board) (c)	Room & board/unit (d)	Total per service (e) a x b x (c + d)
Contract total (sum of column e)						

## Situation #2 - Unit-times-unit-price (pure fee for service)

Contract Section	Comments
<p><b>Article 17 Payment and Allowable costs</b></p> <p><b>Section 17.1 Amount paid under contract</b>  The maximum payment under this contract is [.....] Actual total payment will be based upon the amount of service authorized by the Purchaser and the amount of service performed by Provider. It is understood and agreed by all parties that the Purchaser assumes no obligation to purchase from the Provider any minimum amount of services as defined in the terms of this contract.</p> <p><b>Section 17.2 Basis for payments</b>  Payments for services covered by this contract shall be made on a unit-times-unit-price basis and in accordance with the “order of payment” requirements for the funding program, less client fees and other collections made by the Provider for services covered by this contract.</p> <p><b>Section 17.2.1 Units and prices</b> - The units and prices for each service purchased from the Provider are included in the following table:</p> <p>[Insert unit and price info – see table at the end of this section for an example]</p> <p>The Purchaser shall determine the type of services provided and the number of units of services provided for each client. Units and prices may be re-negotiated. The Purchaser will not reimburse the Provider for any unit of service not previously authorized by the Purchaser.</p> <p>(See <a href="#">Article 21 “Revision or Termination of the Contract”</a> and <a href="#">Article 22 “Services to be Provided”</a>)</p>	<p>Wis. Stat. 46.036(3)(a) requires the total dollar amount to be purchased to be included in the contract.</p> <p>Some Purchasers make all collections themselves. If this is your practice, leave off the “less client fees...” phrase so that this section just says “Payments shall be made on a unit-times-unit-price basis with limited profit or reserve and in accordance with the “order of payment” requirements for the funding program.”</p> <p>Wis. Stat. 46.036 requires the following items to be in the contract:</p> <ul style="list-style-type: none"> <li>✓ Total amount to be purchased</li> <li>✓ For each service, number of clients to be served</li> <li>✓ Number of client units</li> <li>✓ Unit rate per client</li> <li>✓ Total dollar amount for each service</li> </ul> <p>The table at the end of the previous section shows one way to relay this information in the contract. Purchasers can modify the format to suit their needs.</p> <p>Some Purchasers include client names in contract documents, and others do not on the principle that the contract is a public document and client names are confidential information. We recommend using just the number of clients in the contract.</p> <p>Each SPC or HIPAA code should crosswalk to the services to be provided that are described in <a href="#">Article 22 “Services to be Provided.”</a></p>



**Section 17.2.2 Client fees and third party collections [Option #1]**

The Provider shall bill clients for a portion of the cost of care, in conformance with the requirements of HFS 1 and using the uniform schedule of fees and policies supplied by the Purchaser.

The Provider shall bill responsible third parties for the cost of care.

All amounts collected from clients and third parties shall be supported by the Provider's records and shall be reported to the Purchaser [..... specify format and timing.....] (See [Article 18 "Records"](#) and [Article 19 "Reporting."](#))

**Section 17.2.2 Client fees and third party collections [Option #2]**

The Purchaser is responsible for all billing and collection for amounts due from clients and third parties. The Provider shall not collect any funds from clients or from third parties.

**Section 17.3 Advance and surety bond**

**Section 17.3.1 Payment of the advance** - As soon as possible after the contract is signed by both parties, the Purchaser shall make an advance to the Provider in the amount of 1/12<sup>th</sup> of the maximum dollar amount to be paid under this contract.

OR

**Section 17.3.1 Payment of the advance** – The Purchaser shall make an advance payment in each of the first three months. Each payment will be in the amount of 1/12<sup>th</sup> of the maximum dollar amount to be paid under this contract.

**Section 17.3.2 Surety bond** - The Provider shall supply a Surety Bond. The Surety Bond must be for an amount at least equal to the amount of the advance payment and must accompany the signed contract that is returned to the Purchaser. The insurer issuing the

Wis. Stat. 46.036(4)(e) indicates that a uniform schedule of fees shall be charged to clients, but gives the option for having the Provider or someone else make the billings. The statute also indicates that any amount the Provider collects shall offset payments under the contract.

Option #1 – Use the language at left if the Purchaser chooses to have the Provider make billings to clients or third parties

Option #2 – Use the language at left if the Purchaser chooses to do all billings itself or through a service agency.

Wis. Stat. 46.036(3)(f) allows Purchasers to give Providers advances up to one-twelfth of an annual contract, and it requires a surety bond if the advance payment exceeds \$10,000. Whether to allow advances and the number of advances to allow will depend on the length of time for the billing cycle. The language shown in the first version of Section 17.3.1 is for a situation where the billing cycle is relatively short, so there is a need for only one advance. The second example is for a situation where the billing cycle is longer, warranting additional advances.

Leave this entire section on advance and surety bond out of the contract if there is no advance.

Leave the surety bond provision out of the contract if a surety bond isn't required.

If you do require a surety bond, have your legal counsel or risk manager review the surety bond that you receive from the Provider to ensure that it meets your needs.

surety bond must be licensed to conduct surety business in Wisconsin. The insurer shall use a bond form acceptable to the Purchaser.

### **Section 17.3.3 Recoupment of the advance**

- The advance will be recouped during the last three months of the contract period, or when payments made under the contract equal or exceed seventy-five percent of the contract amount. A final cash adjustment will be done after reconciliation of the Contract amounts to actual final reported expenses.

### **Section 17.4 Reporting for payment**

Each month, the Provider shall report the units of service provided during the month on the forms provided by the Purchaser. All information reported to the Purchaser shall be supported by the Provider's records. The report is due to the Purchaser on the 15<sup>th</sup> day following the end of the report month. If the Provider's report is complete and timely, the expected payment date is the 30<sup>th</sup> day following the end of the report month. (See [Article 18 "Records"](#) and [Article 19 "Reporting."](#))

### **Section 17.5 Payment in excess of earned amount**

The Provider shall return to Purchaser any funds paid in excess of the amount earned under this contract within 90 days of the end of the contract period. If the Provider fails to return funds paid in excess of the amount earned, the Purchaser may recover the excess payment from subsequent payments made to the Provider or through other collection means.

If the Purchaser gives the Provider an advance, it also needs to recoup the advance. One method to do this is to monitor payments and start takebacks when agency reached a certain point, say three quarters of the way through the contract period or amount. Modify the contract section on recoupment as needed to reflect your business practice.

The Purchaser makes modifications as needed to reflect its policy on reporting frequency, form name/number, due dates, and expected payment dates.

Wis. Stat. 46.036(5) indicates that the Purchaser shall recover payments in excess of the earned amount from subsequent payments made to the Provider. "Other collection means" should be included in the contract in case there aren't subsequent payments to collect from.

## **Units and Prices (see Section 17.2.1)**

SPC or HIPAA code for service	Service	No. of clients (a)	Client service units (b)	Rate/unit (excluding room & board) (c)	Room & board/unit (d)	Total per service (e) a x b x (c + d)
Contract total (sum of column e)						



### Situation #3 - Reimbursement of allowable costs

Contract Section	Comments
<p><b>Article 17 Payment and Allowable Costs</b></p> <p><b>Section 17.1 Amount paid under contract</b>  The maximum payment under this contract is [.....] Actual total payment will be based upon the amount of service authorized by the Purchaser and the amount of service performed by Provider. It is understood and agreed by all parties that the Purchaser assumes no obligation to purchase from the Provider any minimum amount of services as defined in the terms of this contract.</p> <p><b>Section 17.2 Basis for payments</b>  Payments for services covered by this contract shall be made on the basis of reimbursement of allowable costs with limited profit for for-profits and in accordance with the “order of payment” requirements for the funding program, less client fees and other collections made by the Provider for services covered by this contract. Final settlement of the contract will be based on audit. (See <a href="#">Article 1 “Audit”</a> and <a href="#">Article 22 “Services to be Provided”</a>)</p> <p><b>Section 17.2.1 Allowable costs</b> - The Provider can only spend funds received under this contract on allowable costs, as defined in the <i>Allowable Cost Policy Manual</i> (online at <a href="http://www.dhfs.state.wi.us/grants/Administration/ACPM.HTM">http://www.dhfs.state.wi.us/grants/Administration/ACPM.HTM</a>).</p> <p><b>Section 17.2.2 Profit for for-profit Providers</b>  – The Provider can only spend funds received under this contract on allowable costs, as defined in the <i>Allowable Cost Policy Manual</i> (online at <a href="http://www.dhfs.state.wi.us/grants/Administration/ACPM.HTM">http://www.dhfs.state.wi.us/grants/Administration/ACPM.HTM</a>). The Purchaser allows for-profit Providers to have limited profit. The profit is limited by expenditures on allowable costs that the Provider incurs in performing the services</p>	<p>Wis. Stat. 46.036(3)(a) requires the total dollar amount to be purchased to be included in the contract.</p> <p>Some Purchasers make all collections themselves. If this is your practice, leave off the “less client fees...” phrase so that this section just says “Payments for services covered by this contract shall be made on the basis of reimbursement of allowable costs with limited profit for for-profits and in accordance with the “order of payment” requirements for the funding program. Final settlement of the contract will be based on audit.”</p> <p>Delete “Final settlement of the contract will be based on audit” if the audit is waived, but you should have a way to monitor allowability of costs that the Provider reports for payment and the profit for for-profit Providers.</p> <p>Wis. Stat. 46.036(3)(c) allows profit for for-profits. Profit is defined in the <i>Allowable Cost Policy Manual</i>.</p> <p>Purchasers can specify lower levels of profit or reserve than defined in the ACPM and the statute. However, you need to balance this limitation against a for-profit Provider’s ability to remain a viable business, which may be jeopardized if a for-profit Provider can’t make a reasonable profit.</p>

purchased under this contract. Profit is defined in the *Allowable Cost Policy Manual*.

**Section 17.2.3 Client fees and third party collections [Option #1]**

The Provider shall bill clients for a portion of the cost of care, in conformance with the requirements of HFS 1 and using the uniform schedule of fees and policies supplied by the Purchaser.

The Provider shall bill responsible third parties for the cost of care.

All amounts collected from clients and third parties shall be supported by the Provider's records and shall be reported to the Purchaser [..... specify format and timing.....] (See [Article 18 "Records"](#) and [Article 19 "Reporting."](#))

**Section 17.2.3 Client fees and third party collections [Option #2]**

The Purchaser is responsible for all billing and collection for amounts due from clients and third parties. The Provider shall not collect any funds from clients or from third parties.

**Section 17.2.4 Audit** - The amount earned under this contract shall be confirmed through an annual audit (see [Article 1 "Audit"](#)). For-profit Providers shall include a schedule in their audit reports showing the total allowable costs and the calculation of the allowable profit by contract or by service category.

**Section 17.3 Advance and surety bond**

**Section 17.3.1 Payment of the advance** - As soon as possible after the contract is signed by

Reserves for non-profits are not applicable under a cost reimbursement contract since the statute allowing reserves (Wis. Stat. 46.036(5m)) limits them to situations where non-profit Providers are paid on a prospectively set rate.

Wis. Stat. 46.036(4)(e) indicates that a uniform schedule of fees shall be charged to clients, but gives the option for having the Provider or someone else make the billings. The statute also indicates that any amount the Provider collects shall offset payments under the contract.

Option #1 – Use the language at left if the Purchaser chooses to have the Provider make billings to clients or third parties.

Option #2 – Use the language at left if the Purchaser chooses to do all billings itself or through a service agency.

An audit is probably going to be necessary to confirm that the amount paid under the contract is correct. Leave this section out if you have waived the audit, but you should make sure you have another way to ensure that you paid only for allowable costs.

Currently, the *Provider Agency Audit Guide* does not require a schedule showing profit for for-profit. However, such a schedule is useful for showing the allowable profit, and Purchasers can require one by contract.

Reserves for non-profits are not allowable under a cost reimbursement contract, so there is no mention of reserves in this section.

Wis. Stat. 46.036(3)(f) allows Purchasers to give Providers advances up to one-twelfth of an annual contract, and it requires a surety bond if the advance payment exceeds \$10,000. Whether to allow

both parties, the Purchaser shall make an advance to the Provider in the amount of 1/12<sup>th</sup> of the maximum dollar amount to be paid under this contract.

**OR**

**Section 17.3.1 Payment of the advance –**

The Purchaser shall make an advance payment in each of the first three months. Each payment will be in the amount of 1/12<sup>th</sup> of the maximum dollar amount to be paid under this contract.

**Section 17.3.2 Surety bond** - The Provider shall supply a Surety Bond. The Surety Bond must be for an amount at least equal to the amount of the advance payment and must accompany the signed contract that is returned to the Purchaser. The insurer issuing the surety bond must be licensed to conduct surety business in Wisconsin. The insurer shall use a bond form acceptable to the Purchaser.

**Section 17.3.3 Recoupment of the advance -**

The advance will be recouped during the last three months of the contract period, or when payments made under the contract equal or exceed seventy-five percent of the contract amount. A final cash adjustment will be done after reconciliation of the Contract amounts to actual final reported expenses.

**Section 17.4 Reporting for payment**

Each month, the Provider shall report the allowable costs expended under the contract during the month on the forms provided by the Purchaser. All information reported to the Purchaser shall be supported by the Provider's records. The report is due to the Purchaser on the 15<sup>th</sup> day following the end of the report month. If the Provider's report is complete and timely, the expected payment date is the 30<sup>th</sup> day following the end of the report month. (See [Article 18 "Records"](#) and [Article 19 "Reporting."](#))

**Section 17.5 Payment in excess of earned amount**

The Provider shall return to Purchaser any funds paid in excess of the amount earned under this contract within 90 days of the end of the

advances and the number of advances to allow will depend on the length of time for the billing cycle. The language shown in the first version of Section 17.3.1 is for a situation where the billing cycle is relatively short, so there is a need for only one advance. The second example is for a situation where the billing cycle is longer, warranting additional advances.

Leave this entire section on advance and surety bond out of the contract if there is no advance.

Leave the surety bond provision out of the contract if a surety bond isn't required.

If you do require a surety bond, have your legal counsel or risk manager review the surety bond that you receive from the Provider to ensure that it meets your needs.

If the Purchaser gives the Provider an advance, it also needs to recoup the advance. One method to do this is to monitor payments and start takebacks when agency reached a certain point, say three quarters of the way through the contract period or amount. Modify the contract section on recoupment as needed to reflect your business practice.

The Purchaser makes modifications as needed to reflect its policy on reporting frequency, form name/number, due dates, and expected payment dates.

Wis. Stat. 46.036(5) indicates that the Purchaser shall recover payments in excess of the earned amount from subsequent payments made to the Provider. "Other collection means" should be included in the contract in case there aren't subsequent payments to collect from.

contract period. If the Provider fails to return funds paid in excess of the amount earned, the Purchaser may recover the excess payment from subsequent payments made to the Provider or through other collection means.	
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**Resources:**

- ⇒ *Allowable Cost Policy Manual* (online at <http://www.dhfs.state.wi.us/grants/Administration/ACPM.HTM>)
- ⇒ A DRAFT guide on contracting and funding for home and community-based waiver clients is available for comment. Please contact Melanie Foxcroft by email to receive copy of the comment draft ([foxcrma@dhfs.state.wi.us](mailto:foxcrma@dhfs.state.wi.us))

**Related topics:**

- ⇒ [Article 1 “Audit”](#)
- ⇒ [Article 18 “Records”](#)
- ⇒ [Article 19 “Reporting”](#)
- ⇒ [Article 21 “Revision or Termination of this Contract”](#)
- ⇒ [Article 22 “Services to be Provided”](#)

## Article 18 Records

The Provider must maintain records supporting its financial and performance reporting and allow the Purchaser to have access to those records.

### *Retention period for records*

At first glance, specifying a retention period for records appears to be straightforward: OMB Circular A-110, which details the administrative requirements for nonprofits that receive federal funding, says that records need to be kept for at least three years, and longer if litigation or audit is begun before the three years is expired. However, according to the department's records experts, there is no such thing as one single minimum record retention period that applies to all activities involving all governmental funding. Different activities are subject to different state and federal requirements, including different record retention requirements, and the Provider must honor whatever requirements are applicable. Therefore, the model contract language is generic in requiring the Provider to meet "state and federal laws, rules, and regulations" for records. The Purchaser may choose to state a retention period when it knows what the applicable retention period is for records related to the funding and services covered by the contract.

<b>Contract Section</b>	<b>Notes</b>
<b>Article 18 Records</b> <b>Section 18.1 Maintenance of records</b> The Provider shall maintain and retain such records and financial statements as required by state and federal laws, rules, and regulations.  <b>Section 18.2 Access to records</b> The Provider shall permit appropriate representatives of the Purchaser to have timely access to the Provider's records and financial statements as necessary to review the Provider's compliance with contract requirements for the use of the funding.	Option – specify retention period for records (see comments above).

### **Resources:**

- ⇒ *Financial Management Manual for Counties, Tribes and 51 Boards*, Chapter B2 "Accounting Records and Source Documentation" (online at <http://www.dhfs.state.wi.us/Grants/FMM/B2ACCTPOLICY.htm>)

- ⇒ OMB Circular A-110 “Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” Section \_\_\_\_ .53 Retention and Access Requirements for Records (online at <http://www.whitehouse.gov/omb/circulars/a110/a110.html>)
- ⇒ Wisconsin Statutes, Chapter 19, Subchapter II (<http://www.legis.state.wi.us/rsb/stats.html>)
- ⇒ Wisconsin Administrative Code ADM 12 “Electronic Records Management – Standards and Requirements” (<http://enterprise.state.wi.us/home/erecords/>)
- ⇒ County records ordinances

***Related topics:***

- ⇒ [Article 1 “Audit”](#)
- ⇒ [Article 19 “Reporting”](#)

## Article 19 Reporting

This section pulls together the reporting requirements from other sections and adds specific guidance on the method of filing reports.

<b>Contract Section</b>	<b>Notes</b>
<p><b>Article 19 Reporting</b></p> <p>The Provider shall comply with the reporting requirements of Purchaser. All reports shall be in writing and, when applicable, in the format specified by the Purchaser. All reports shall be supported by the Provider's records (<a href="#">See Article 18 "Records"</a>). All reports shall be hand-delivered to the Purchaser or sent to the Purchaser via registered mail at the address listed in this contract.</p> <p>The following reports are required:</p> <p>Monthly</p> <ul style="list-style-type: none"> <li>• [.....]</li> </ul> <p>Annually</p> <ul style="list-style-type: none"> <li>• [.....]</li> </ul> <p>As needed</p> <ul style="list-style-type: none"> <li>• [.....]</li> </ul>	<p>Optional - Provide a list of the applicable reports so there's one place in the contract where all reports are summarized. These are the reports mentioned in this model contract:</p> <p>Monthly</p> <ul style="list-style-type: none"> <li>• Accounting for Provider's handling of client funds (<a href="#">Article 4</a>)</li> <li>• Report for payment (<a href="#">Article 17</a>)</li> <li>• Report on amounts collected from clients and third parties by the Provider (<a href="#">Article 17</a>)</li> <li>• Report on matching, level of effort, or earmarking (<a href="#">Article 17</a>)</li> </ul> <p>Annually</p> <ul style="list-style-type: none"> <li>• Audit report (<a href="#">Article 1</a>)</li> <li>• Summary report on all client grievances (<a href="#">Article 5</a>)</li> </ul> <p>As needed</p> <ul style="list-style-type: none"> <li>• Report on employee charged with or convicted of crime (<a href="#">Article 2</a>)</li> <li>• Reports on client grievances as they occur and summary report on all client grievances upon request of Purchaser (<a href="#">Article 5</a>)</li> <li>• Report on determination of debarment or suspension status (<a href="#">Article 9</a>)</li> <li>• Report on eligibility determinations made by the Provider (<a href="#">Article 10</a>)</li> <li>• Copies of licensing and inspection reports (<a href="#">Article 14</a>)</li> <li>• Individual Service Plan (<a href="#">Article 22</a>)</li> <li>• Report on performance (<a href="#">Article 22</a>)</li> <li>• Additional reports for high risk contract situation (<a href="#">Article 23</a>)</li> </ul>

***Related topics:***

- ⇒ [Article 1 “Audit”](#)
- ⇒ [Article 2 “Caregiver Background Checks”](#)
- ⇒ [Article 4 “Client Funds”](#)
- ⇒ [Article 5 “Client Rights and Grievances”](#)
- ⇒ [Article 9 “Debarment and Suspension”](#)
- ⇒ [Article 10 “Eligibility”](#)
- ⇒ [Article 14 “License, Certification, and Staffing”](#)
- ⇒ [Article 17 “Payment and Allowable Costs”](#)
- ⇒ [Article 18 “Records”](#)
- ⇒ [Article 22 “Services to be Provided”](#)
- ⇒ [Article 23 “Special Conditions for High Risk Contract”](#)



## Article 20 Resolution of Disputes

<i>Contract Section</i>	<i>Notes</i>
<b>Article 20 Resolution of Disputes</b> The Provider may appeal decisions of the Purchaser in accordance with the terms and conditions of the contract and Chapter 68, Wis. Stats.	

## Article 21 Revision or Termination of this Contract

Spelling out the expectations for revising or terminating the contract helps you manage changes in the relationship between the Purchaser and the Provider in an orderly way. Examples of situations where parties to the contract may need to revise or terminate the contract include changes in:

- ⇒ Provider failed to have an audit that met applicable standards.
- ⇒ A different quantity of services is needed.
- ⇒ The amount to be paid for the services is too high or too low, for example, the actual absenteeism rate differs substantially from the absenteeism rate used when establishing the daily rate.
- ⇒ Federal or state laws or regulations or court action require changes in policy or procedures.
- ⇒ The funding to pay for the services is no longer available.
- ⇒ Provider did not provide quality or quantity of services.
- ⇒ The Provider becomes ineligible for receiving federal funds.

In addition, this section implements two provisions in Wis. Stat. 46.036: Paragraph (6) allows renegotiation of the contract. Paragraph (3)(e) allows reimbursement to the Provider for its costs when the Purchaser terminates the contract for reasons other than nonperformance by the Provider.

**Revision to the contract:** Either party can initiate a revision to the contract. However, both parties must agree to the change and sign a written amendment to the contract in order for the change to take effect.

The contract can be revised at any point when both parties agree to the revision, but the Purchaser needs to keep in mind any deadline for reporting costs to its funding agency. For example, the State/County contract specifies the date by which the county can claim state reimbursement for calendar year costs. Renegotiation of contracts for purchase of services must be completed by this date.

**Termination of the contract:** Either party can terminate the contract with 30 day written notice to the other party. Some particular issues to consider when terminating a contract include:

- ⇒ The Purchaser should have a contingency plan for ensuring continuity in services.
- ⇒ The Purchaser might be able to collect actual damages from the Provider. When actual damages are difficult to measure, the Purchaser may be able to collect liquidated damages (see [Article 15 “Liquidated Damages”](#)).
- ⇒ The Purchaser and Provider can negotiate on reimbursement of the Provider’s costs when the Purchaser terminates the contract for reasons other than non-performance (s.46.036(3)(e), Wis. Stats.).
- ⇒ Depending on the type of Provider and the nature of the change, there also could be statutory and regulatory issues to take into account.

Contract Section	Notes
<p><b>Article 21 Revision or Termination of this Contract</b></p> <p><b>Section 21.1 Cause for revision or termination of this contract</b></p> <p>Failure to comply with any part of this contract may be considered cause for revision or termination of this contract.</p> <p><b>Section 21.2 Revision of this contract</b></p> <p>Either party may initiate revision of this contract. Revision of this contract must be agreed to by both parties by an addendum signed by their authorized representatives.</p> <p><b>Section 21.3 Termination of this contract</b></p> <p>Either party may terminate this contract by a 60-day written notice to the other party.</p> <p>Upon termination, the Purchaser's liability shall be limited to the costs incurred by the Provider up to the date of termination. If the Purchaser terminates the contract for reasons other than non-performance by the Provider, the Purchaser may compensate the Provider for its actual allowable costs in an amount determined by mutual agreement of both parties. If the Purchaser terminates the contract for the Provider's breach, the Provider may be liable for any additional costs the Purchaser incurs for replacement services.</p>	<p>The previous model required 30 days for the notification. Here we're suggesting using 60 days, because in many cases 30 days is not long enough to get everything in place to ensure continuous service. A shorter or longer period might be warranted by the complexity of the situation.</p>

**Related topics:**

- ⇒ [Article 1 "Audit"](#)
- ⇒ [Article 6 "Conditions of the Parties' Obligations"](#)
- ⇒ [Article 9 "Debarment and Suspension"](#)
- ⇒ [Article 15 "Liquidated Damages"](#)
- ⇒ [Article 22 "Services to be Provided"](#)

## Article 22 Services to be Provided

The article on services to be provided under the contract is the heart of the contract. Here the contract writer defines the services the Provider will be expected to perform, the standards the Provider needs to meet, and how the Provider's performance will be measured. The sections within this article provide a roadmap of items to consider when writing this article, and some of the sections will not be applicable to some situations.

Examples of actual contracts prepared by county agencies are online at [www.dhfs.state.wi.us/grants](http://www.dhfs.state.wi.us/grants).

<b>Contract Section</b>	<b>Notes</b>
<p><b>Article 22 Services to be Provided</b></p> <p><b>Section 22.1 Description of services</b> For each eligible client referred by the Purchaser, the Provider agrees to provide the following services: _____.</p> <p>The goal of the service is to _____.</p> <p><b>Section 22.2 Developing Individual Service Plans</b> The Provider shall develop an Individual Service Plan for each client within 30 days following the date the Purchaser referred the client to the Provider. The Provider shall: (a) ensure that the Individual Service Plan complies with applicable standards; and (b) promptly submit the plan upon completion to the Purchaser for review and approval. The Provider agrees to work with the Purchaser as necessary when the Provider is developing an Individual Service Plan.</p> <p>The Provider agrees to work with the Purchaser when the Purchaser is developing the Purchaser's Individual Service Plan.</p> <p><b>Section 22.3 Implementing Individual Service Plans</b> The Provider shall provide the services specified in this Article and in the Provider's Individual Service Plan for each client, as authorized by the Purchaser. In providing services, the Provider shall:</p>	<p><b>Notes for Sections 22.1 and 22.2:</b> There are often two Individual Services Plans (ISP's): the one prepared by the Purchaser that covers the entire scope of services that the Purchaser is coordinating for the client and the one prepared by the Provider that covers the services the Provider is performing for the client.</p> <p>In Section 22.1, the Purchaser should describe the services from its ISP that it expects the Provider to perform.</p> <p>In Section 22.2, the Purchaser should describe its expectations for the Provider's ISP and for coordination between the Purchaser and Provider when developing their respective ISP's. Modify this section as needed if there are no ISP's or no expectation of coordination in development of ISP's.</p>

- a. Transfer a client from one category of care or service to another only with the approval of the Purchaser (s. 46.036(4)(d) Wis. Stats.).
- b. Coordinate with other service Providers as necessary to achieve the client's goals as identified in the Purchaser's and Providers Individual Service Plans;
- c. Obtain services from another party only with prior written approval from the Purchaser. If the Provider obtains services for any part of this Agreement from another party, the Provider is responsible for fulfillment of the terms of the contract.

#### **Section 22.4 Other Program Requirements**

In providing required services under this contract, the Provider shall comply with the following program requirements: *[list the requirements]*

- or -

In providing required services under this contract, the Provider shall comply with the requirements described in *[reference the comment that lists the required activities that the Provider must perform or the prohibited activities]*.

#### **Section 22.5 Inability to provide quality or quantity of services**

The Provider shall notify the Purchaser in writing and delivered in person or by registered mail whenever it is unable to provide the required quality or quantity of services. Upon such notification, the Purchaser and Provider shall determine whether such inability will require a revision or termination of this contract. (See Article 21 "Revision or termination of the contract.")

#### **Section 22.6 Documentation of quality and quantity of services**

The Provider shall retain all documentation necessary to adequately demonstrate the time, duration, location, scope, quality, and

Besides developing and implementing service plans, it is common for Purchasers to also describe actions that the Provider shall or shall not perform in providing the services. The types of actions that are allowed or unallowed will vary substantially depending on the services being purchased.

The Purchaser can specifically identify documentation requirements that it deems to be critical to the contract's success. See Article 17 "[Payment and Allowable Costs](#)" and Article 18 "[Records](#)"

effectiveness of services rendered under the contract. The Purchaser reserves the right to not pay for units of services reported by the Provider that are not supported by documentation required under this contract.

**Section 22.7 Standards for performance in delivery of services**

The Purchaser will monitor the Provider's performance and will use the results of this monitoring to evaluate the Provider's ability to provide adequate services to clients. If the Provider fails to meet contract goals and expected results, the Purchaser may reduce or terminate the contract. When providing these services, the Provider agrees to meet the following standards of performance:

- a. [General statement #1, performance measures a, b, etc.]
- b. [General statement #2, performance measures a, b, etc.]
- c. [General statement #3, performance measures a, b, etc.]
- d. [and so on]

**Section 22.8 Assessing performance in delivery of services**

The Purchaser retains sole authority to determine whether the Provider's performance under the contract is adequate. The Provider agrees to the following:

- a. The Provider shall allow the Purchaser's care manager and contracting staff to visit the Provider's facility or work site at any time for the purposes of ensuring that services are being provided as specified in the Plan of Care and the contract.
- b. Upon request by the Purchaser or its designee, the Provider shall make available to the Purchaser all documentation necessary to adequately assess Provider performance.

<p>c. The Provider will cooperate with the Purchaser in its efforts to implement the Purchaser's quality improvement and quality assurance program.</p> <p>d. The Provider shall develop and implement a process for assessing client satisfaction with services provided. The Provider shall report in a timely manner the results of its client satisfaction assessment effort to the Purchaser. The Purchaser reserves the right to review and approve the Provider's client satisfaction assessment process, and to require the Provider to submit a corrective action plan to address concerns identified in the review.</p> <p>e. The Provider shall cooperate with the Purchaser in implementing the Purchaser's program for assessing client satisfaction with services. The Purchaser reserves the right to require the Provider to submit a corrective action plan to address concerns identified in the review.</p> <p>f. The Provider shall submit all performance and other program reports listed below:</p> <p>[list the performance and other program reports here]</p>	<p>Instead of listing any performance and other program reports in this section, the Purchaser could list these items under Article 19 "<a href="#">Reporting</a>."</p>
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**Related topics:**

- ⇒ Article 17 "[Payment and Allowable Costs](#)"
- ⇒ Article 18 "[Records](#)"
- ⇒ Article 19 "[Reporting](#)"

## Article 23 Special Provisions for High Risk Contract

The *Provider Agency Audit Guide* includes guidance on assessing risk in the context of whether to require an audit. However, this same risk assessment can also be used to decide whether to contract with an agency in the first place or whether to do so under special conditions.

The Purchaser always has the option to not enter into a contract with a Provider or to terminate a contract if problems come up during the contract. The provisions in this article are for situations where the Purchaser wants to begin or continue to do business with the Provider, but believes it is imprudent to do so without additional measures to mitigate risks of problems with the contract.

The federal Grants Management Common Rule (HHS Codification) includes the following guidance on high risk Providers, which can be a useful starting point for considering risky situations in general:

Special grant or subgrant conditions for “high-risk” grantees.

- (a) A grantee or subgrantee may be considered “high-risk” if an awarding agency determines that a grantee or subgrantee:
  - (1) Has a history of unsatisfactory performance, or
  - (2) Is not financially stable, or
  - (3) Has a management system which does not meet the management standards set forth in this part, or
  - (4) Has not conformed to terms and conditions of previous awards, or
  - (5) Is otherwise not responsible;and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.
- (b) Special conditions or restrictions may include:
  - (1) Payment on a reimbursement basis;
  - (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;
  - (3) Requiring additional, more detailed financial reports;
  - (4) Additional project monitoring;
  - (5) Requiring the grantee or subgrantee to obtain technical or management assistance; or
  - (6) Establishing additional prior approvals.
- (c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:
  - (1) The nature of the special conditions/restrictions;
  - (2) The reason(s) for imposing them;
  - (3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and
  - (4) The method of requesting reconsideration of the conditions/ restrictions imposed.



**Situation #1 – The Purchaser is concerned about the contract becoming high risk during the contract period.**

Contract Section	Notes
<p><b>Article 23 Special Provisions for High Risk Contract</b></p> <p>During the course of the contract, the Purchaser may determine that this contract is high risk as a result of evaluating the Provider's performance or other factors. Determination of high risk status could result in Purchaser unilaterally implementing the following changes:</p> <ul style="list-style-type: none"> <li>a. Modifying the payment method to a cost reimbursement basis;</li> <li>b. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;</li> <li>c. Requiring additional, more detailed financial reports;</li> <li>d. Performing additional project monitoring;</li> <li>e. Requiring the Provider to obtain technical or management assistance;</li> <li>f. Establishing additional prior approvals; or</li> <li>g. Other conditions that the Purchaser considers appropriate considering the circumstances.</li> </ul> <p>The Provider may appeal these changes under <a href="#">Article 20 "Resolution of disputes,"</a> or it may request renegotiation of the contract or give notice of termination of the contract under <a href="#">Article 21 "Revision or termination of the contract."</a></p>	<p>Items a through f are from the Grants Management Common Rule. We added item g. Purchasers can modify this list to reflect their business practices.</p>

***Situation #2 – The Purchaser has determined that this is a high risk contract***

Contract Section	Notes
<p><b>Article 23 Special Provisions for High Risk Contract</b></p> <p>The Purchaser has determined that this is a high risk contract. [...Describe the reason(s) for the high risk designation and the additional contract requirement(s) for mitigating these risks...]</p> <p>The Purchaser may unilaterally implement other changes depending on experience with the contract:</p> <ul style="list-style-type: none"> <li>a. Modifying the payment method to a cost reimbursement basis;</li> <li>b. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;</li> <li>c. Requiring additional, more detailed financial reports;</li> <li>d. Performing additional project monitoring;</li> <li>e. Requiring the Provider to obtain technical or management assistance;</li> <li>f. Establishing additional prior approvals; or</li> <li>g. Other conditions that the Purchaser considers appropriate considering the circumstances.</li> </ul> <p>The Provider may appeal these changes under <a href="#">Article 20 “Resolution of disputes.”</a> or it may request renegotiation of the contract or give notice of termination of the contract under <a href="#">Article 21 “Revision or termination of the contract.”</a></p>	<p>Several examples of a high risk situations and special contract provisions follow this section.</p> <p>Items a through f are from the Grants Management Common Rule. We added item g. Purchasers can modify this list to reflect their business practices.</p>

***Examples of a high risk situations and special contract provisions:***

<b><i>Problem</i></b>	<b><i>Special conditions</i></b>
Inexperienced agency	<p>The Purchaser has determined that this is a high risk contract. The Provider recently began operations. To mitigate the risks for a new Provider, the Provider shall:</p> <ul style="list-style-type: none"><li>• Hire a bookkeeper to keep financial records and to start at the beginning of the contract period and attach the bookkeeper's name, address, and telephone number to this contract.</li><li>• Hire an auditor to perform the annual audit and attach a copy of the signed engagement letter to this contract.</li></ul>
History of failure to take timely corrective action after licensing citation	<p>The Purchaser has determined that this is a high risk contract. The Provider has a history of delays in taking corrective actions for citations issues by the Bureau of Quality Assurance. To mitigate risk of such delays, the Provider shall pay the Purchaser a fine of \$50.00 for each day a cited issue remains uncorrected, starting the day after the Provider receives the citation and continuing until the Provider shows evidence of corrective action.</p>
Repeat audit findings	<p>The Purchaser has determined that this is a high risk contract. The Provider's most recent audit reports show repeat, uncorrected findings for lack of written accounting policies and procedures. The Provider shall develop and implement written accounting policies and procedures by June 30, 2004. The Purchaser will rely on auditor's review of the current status or prior year findings in the 2003 audit, which is due to the Purchaser on June 30, 2004, to confirm implementation of the accounting policies and procedures.</p>

***Resources:***

- ⇒ *Provider Agency Audit Guide*, Chapters 2 and 3, online at [www.dhfs.state.wi.us/grants](http://www.dhfs.state.wi.us/grants)

***Related topics:***

- ⇒ [Article 1 "Audit"](#)  
⇒ [Article 14 "License, Certification, and Staffing"](#)  
⇒ [Article 19 "Reporting"](#)  
⇒ [Article 20 "Resolution of Disputes"](#)  
⇒ [Article 21 "Revision or Termination of this Contract"](#)

## Appendix A – Example Contract

To show how the Articles of the model contract work together, we created a contract for a hypothetical situation: the 2004 contract between Wilson County and Loving Care, Inc., a new agency that will provide residential care services for people with advanced Icky Awful Syndrome (IAS), resulting from overexposure to government contracts. Wilson County has made the following decisions:

- 1) The contract is high risk. Loving Care, Inc. is a new Provider and does not have experience in operations or contracting. In addition, the dollar amount that Wilson County expects to pay Loving Care is significant – over \$200K, and Wilson County monitors reserves. Therefore, Wilson County decided to require that the Loving Care have an agency-wide audit ([Article 1](#)) and to require that Loving Care hire a bookkeeper and auditor at the beginning of the contract ([Article 23](#)).
- 2) Loving Care is subject to the caregiver background checks required under HFS 12. ([Article 2](#))
- 3) Loving Care will receive more than \$25,000, but it has fewer than 25 employees. Therefore it will not need a Civil Rights Compliance Plan, but it will need a Letter of Assurance. ([Article 3](#))
- 4) Wilson County determines eligibility for all clients, so Loving Care will not have responsibility for determining eligibility. ([Article 10](#))
- 5) Loving Care is not a Business Associate under HIPAA, it will not be providing administrative services, and it will not be making electronic billings. Therefore the contract will only need to include the basic audit clause for HIPAA. ([Article 11](#))
- 6) Wilson County is concerned about the risk of needing to find another Provider on short notice if Loving Care cannot provide these services. Therefore, Wilson County is including a provisions for liquidated damages in this contract. \$200.00 a day is an approximation of the damages that Wilson County would face for not having needed services provided to its clients. ([Article 15](#))
- 7) The funding source that Wilson County will be using to pay Loving Care does not have a matching, level of effort, or earmarking requirement. ([Article 16](#))
- 8) Wilson County will pay Loving Care on a unit-time-unit-price basis with limited profit or reserve, it will make all billings for client fees and third party collections, it will allow advances to help Loving Care get through the initial months of operation, and it will require a surety bond. ([Article 17](#))
- 9) Wilson County will monitor several performance measures that focus on client satisfaction with care at the facility. ([Article 22](#))

The example contract begins on the following page.

# Purchase of Services Contract

## Purchaser and Provider Information

See [Guidance for Contract Front Matter](#)

### Purchaser:

Organization Name **Loving Care, Inc.**  
 Address **123 Main Street  
 Madison, WI 12345**  
 Name of contact person **I. M. Loving**  
 Telephone **(123) 456-7890**  
 Fax **NA**  
 E-mail **NA**

### Provider:

Organization Name **Wilson County HSD**  
 Address **1 West Wilson Street  
 Madison, WI 12345**  
 Name of contact person **Wilson Staffperson**  
 Telephone **(123) 456-7890**  
 Fax **(123) 456-7890**  
 E-mail **xxx@xxx**

Provider's fiscal year end: **December 31, 2004**  
 Provider's Employer Identification Number: **12-345670**

See [Guidance for Contract Front Matter](#)

## Contract Information

**Contract Number:** **2004-1234**  
**Services to be provided:** **Residential care for clients with IAS**  
 [detail is in "Services to be Provided" section]  
**Contract period:** **1/1/04 – 12/31/04**  
**Maximum payment under this contract:** **\$216,400**  
**Source of funding:** **50% Federal, CFDA # 12.345**  
**50% State, State ID # 123.456**

See [Guidance for Contract Front Matter](#)

See [Guidance for Article 1](#)

See [Guidance for Article 2](#)

See [Guidance for Article 3](#)

See [Guidance for Article 4](#)

See [Guidance for Article 5](#)

See [Guidance for Article 6](#)

See [Guidance for Article 7](#)

See [Guidance for Article 8](#)

See [Guidance for Article 9](#)

Summary of Contract Provisions	
Provision	Comments
<b>Article 1 Audit</b>	<i>Audit requirement</i> <input checked="" type="checkbox"/> Agency-wide <input type="checkbox"/> Program <input type="checkbox"/> Agreed-upon procedures <input type="checkbox"/> Audit is waived
<b>Article 2 Caregiver Background Checks</b>	<i>Applicable?</i> <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
<b>Article 3 Civil Rights Compliance Plan</b>	<i>Provider have more than 25 employees <u>and</u> more than \$25,000?</i> <input checked="" type="checkbox"/> No (Provider attach Letter of Assurance to the contract) <input type="checkbox"/> Yes (Provider attach Civil Rights Compliance Plan to the contract)
<b>Article 4 Client Funds</b>	<i>Client funds</i> <input checked="" type="checkbox"/> Provider prohibited from handling client funds <input type="checkbox"/> Provider allowed to handle client funds (Purchaser attach requirements for handling client funds to contract) <input type="checkbox"/> Not relevant
<b>Article 5 Client Rights and Grievances</b>	
<b>Article 6 Conditions of the Parties Obligations</b>	
<b>Article 7 Confidentiality</b>	
<b>Article 8 Conflict of Interest</b>	
<b>Article 9 Debarment and Suspension</b>	

See [Guidance for Article 10](#)

**Article 10 Eligibility**

*Determining eligibility*

- ☒ Purchaser determines eligibility
- ☐ Provider determines eligibility (Purchaser attach eligibility requirements to contract)
- ☐ No eligibility requirement

See [Guidance for Article 11](#)

**Article 11 Health Insurance Portability and Accountability Act of 1996 “HIPAA” Applicability**

*Business Associate?*

- ☒ No
- ☐ Yes (Purchaser attach “Business Associate Agreement” to contract and Provider sign)

*PHI?*

- ☒ No
- ☐ Yes (Purchaser attach “Agreement on Provider Use of PHI” to contract and Provider sign)

*Electronic Billing?*

- ☒ No
- ☐ Yes (Purchaser attach “Trading Partner Agreement and Companion Guides” to contract and Provider sign)

See [Guidance for Article 12](#)

**Article 12 Indemnity and Insurance**

Provider attach Certificate of Insurance to contract

See [Guidance for Article 13](#)

**Article 13 Independent Contractor**

See [Guidance for Article 14](#)

**Article 14 License, Certification, and Staffing**

*License or certification required?*

- ☐ No
- ☒ Yes (Provider attach copy of license/certification and most recent inspection report)

See [Guidance for Article 15](#)

## Article 15 Liquidated Damages

*Liquidated damages provision applies?*

- ☐ No  
☒ Yes, damage amount is agreed-upon

See [Guidance for Article 16](#)

## Article 16 Matching, Level of Effort, and Earmarking

*Matching, level of effort and earmarking requirements:*

- ☒ No matching, level of effort, or earmarking requirements  
☐ Matching requirements (Purchaser attach matching requirements to contract)  
☐ Level of effort requirements (Purchaser attach level of effort requirements to contract)  
☐ Earmarking requirement (Purchaser attach earmarking requirements to contract)

See [Guidance for Article 17](#)

## Article 17 Payment and Allowable Costs

*Basis of payment*

- ☐ Reimbursement of allowable costs  
☒ Unit-times-unit-price with limited profit or reserves  
☐ Unit-times-unit-price (pure fee for service)

*Who bills clients and third parties?*

- ☒ Purchaser makes billings  
☐ Provider makes billings (Purchaser attach billing requirements to contract)

*Advances allowed?*

- ☐ No  
☒ Yes

*Surety bond required?*

- ☐ No  
☒ Yes (Provider attach bond to contract)

See [Guidance for Article 18](#)

## Article 18 Records



See [Guidance for Article 19](#)

See [Guidance for Article 20](#)

See [Guidance for Article 21](#)

See [Guidance for Article 22](#)

See [Guidance for Article 23](#)

**Article 19 Reporting**

See Article 19 for a summary of the reporting requirements under this contract

**Article 20 Resolution of Disputes**

**Article 21 Revision or Termination of this Contract**

**Article 22 Services to be Provided**

**Article 23 Special Provisions for High Risk Contract**

*High risk contract?*

☐ No  
☒ Yes

(Provider attach bookkeeper info and copy of audit engagement letter)

**Signatures**

This contract becomes null and void if the time between the Purchaser's authorized representative signature and the Provider's authorized representative signature on this contract exceeds sixty days.

**For Purchaser**

Typed Name  
Title

Wilson Director

Director of Wilson County HSD

Signature

Date

**For Provider**

Typed Name  
Title

I. M. Loving

Executive Director

Signature

Date

Wilson County decided that Loving Care needs to have an agency-wide audit based on its assessment of risks for this contract. This risk is sufficiently high that Wilson County decided to also require special provisions for a high risk contract. See [Guidance for Article 1](#) and [Guidance for Article 23](#).

## **Article 1 Audit**

### **Section 1.1 Type of audit**

The Provider shall submit an annual agency-wide audit to the Purchaser if the total amount of annual funding provided by the Purchaser through this and other contracts is \$25,000 or more.

### **Section 1.2 Audit Standards**

The audit shall be in accordance with the requirements of OMB Circular A-133 “Audits of States, Local Governments, and Non-Profit Organizations” (on line at [www.whitehouse.gov/omb/circulars](http://www.whitehouse.gov/omb/circulars)) if the Provider meets the criteria of that Circular for needing an audit in accordance with that Circular. The audit shall also be in accordance with the following department standard:

- a. The *State Single Audit Guidelines* (on line at [www.ssag.state.wi.us](http://www.ssag.state.wi.us)) if the Provider is a local government that meets the criteria of OMB Circular A-133 for needing an audit in accordance with that Circular or
- b. The *Provider Agency Audit Guide* (on line at [www.dhfs.state.wi.us/grants](http://www.dhfs.state.wi.us/grants)) for all other Providers.

### **Section 1.3 Audit Schedules**

In addition to the schedules required under the *State Single Audit Guidelines* or the *Provider Agency Audit Guide*, the reporting package sent to the Purchaser shall include a supplemental schedule showing revenue and expenses for this contract.

For profit Providers shall include a schedule in their audit reports showing the total allowable costs and the calculation of the allowable profit by contract or by service category.

Non-profit Providers shall include a Reserve Supplemental Schedule (Section 7.1.6 of the *Provider Agency Audit Guide*) in their audit reports, and this schedule shall also be by contract or service category.

### **Section 1.4 Submitting the Reporting Package**

The Provider shall send the required reporting package to the Purchaser at the address listed in this contract. The reporting package is due to the Purchaser within 180 days of the end of the Provider’s fiscal year.

### **Section 1.5 Access to auditor’s workpapers**

When contracting with an audit firm, the Provider shall authorize its auditor to provide access to work papers, reports, and other materials generated during the audit to the appropriate representatives of the Purchaser. Such access shall include the right to obtain copies of the workpapers and computer disks, or other electronic media, which document the audit work.

### **Section 1.6 Failure to comply with the requirements of this section**

If the Provider fails to have an appropriate audit performed or fails to provide a complete audit reporting package to the Purchaser within the specified timeframe, the Purchaser may:

- a. Conduct an audit or arrange for an independent audit of the Provider and charge the cost of completing the audit to the Provider;
- b. Charge the Provider for all loss of federal or state aid or for penalties assessed to the Purchaser because the Provider did not submit a complete audit report within the required time frame;
- c. Disallow the cost of the audit that did not meet the applicable standards; and/or
- d. Withhold payment, cancel the contract, or take other actions deemed by the Purchaser to be necessary to protect the Purchaser's interests.

Loving Care is subject to the caregiver background checks required under HFS 12. See [Guidance for Article 2](#)

## **Article 2 Caregiver Background Checks**

The Purchaser and the Provider agree that the protection of the clients served under this contract is paramount to the intent of this contract. In order to protect the clients served, the Provider shall comply with the provisions of [HFS 12, Wis. Admin. Code](#) (online at <http://www.legis.state.wi.us/rsb/code/index.html>).

### **Section 2.1 Background checks**

The Provider shall conduct caregiver background checks at its own expense of all employees assigned to do work for the Purchaser under this contract if such employee has actual, direct contact with the clients of the Purchaser. The Provider shall retain in its Personnel Files all pertinent information, to include a Background Information Disclosure Form and/or search results from the Department of Justice, the Department of Health and Family Services, and the Department of Regulation and Licensing, as well as out of state records, tribal court proceedings and military records, if applicable.

After the initial background check, the Provider must conduct a new caregiver background search every four years, or at any time within that period when the Provider has reason to believe a new check should be obtained.

### **Section 2.2 Records**

The Provider shall maintain the results of background checks on its own premises for at least the duration of the contract. The Purchaser may audit the Provider's personnel files to assure compliance with the [State of Wisconsin Caregiver Background Check Manual](#) (online at <http://www.dhfs.state.wi.us/caregiver/publications/CgvrProgMan.htm>).

### **Section 2.3 Assignment of staff**

The Provider shall not assign any individual to conduct work under this contract who does not meet the requirement of this law.

### **Section 2.4 Notification to Purchaser**

The Provider shall notify the Purchaser in writing via certified mail within one business day if an employee has been charged with or convicted of any crime specified in [HFS 12.07\(2\)](#) (online at <http://www.legis.state.wi.us/rsb/code/index.html>).

Loving Care will receive more than \$25,000, but it has fewer than 25 employees. Therefore it will need to attach a Letter of Assurance to the contract. See [Guidance for Article 3](#)

## **Article 3 Civil Rights Compliance Plan**

Provider shall comply with the requirements of the current Civil Rights Compliance (CRC) Plan, which is online at <http://www.dhfs.state.wi.us/civilrights/Index.HTM>. Providers that have more than twenty-five (25) employees and receive more than twenty five thousand dollars (\$25,000) must develop and attach a Civil Rights Compliance Plan to this contract. Providers that have less than twenty five (25) employees or receive less than a total of twenty five thousand (\$25,000) dollars must develop and attach a Letter of Assurance to this contract.

Wilson County decided that Loving Care will not handle any client funds. See [Guidance for Article 4](#).

## **Article 4 Client Funds**

All client funds shall be handled by the Purchaser. The Provider shall not handle client funds.

Wilson County decided that due to Loving Care's newness in operations, the risk of problems is sufficiently high that it wants Loving Care to report all grievances to the County at they are filed (second paragraph). See [Guidance for Article 5](#)

## **Article 5 Client Rights and Grievances**

The Provider shall have a formal written grievance procedure that is approved by the licensing or certification authority, if applicable, and by the Purchaser. The Provider shall, prior to or at the time of admission to the Program, provide oral and written notification to each client of his or her rights and the grievance procedure. The Provider shall post the client rights and the grievance procedure in an area readily available to clients and staff of the program.

The Provider shall give the Purchaser a written report for each grievance that is filed in writing against the Provider by any clients or their guardians. The Provider shall deliver these reports to the Purchaser in person or via registered mail within 5 business days of the Provider's

receipt of the grievance. The Provider shall also inform the Purchaser in writing of the resolution of each grievance.

At least once a year, or more frequently when requested by the Purchaser, the Provider shall give the Purchaser a written summary report of all grievances that have been filed with the Program by clients or their guardians since the period covered by the previous summary

report and of the resolution of each grievance. The Provider shall deliver the annual summary report to the Purchaser in person or via registered mail within 30 days of the end of the contract period. Additional summary reports requested by the Purchaser shall be due within 10 days of the Purchaser's request for the reports. All reports shall be delivered to the Purchaser in person or via registered mail.

See [Guidance for Article 6](#)

## **Article 6 Conditions of the Parties' Obligations**

### **Section 6.1 Contingency**

This contract is contingent upon authorization of Wisconsin and United States laws and any material amendment or repeal of the same affecting relevant funding or shall serve to terminate this Agreement, except as further agreed to by the parties hereto.

### **Section 6.2 Powers and Duties**

Nothing contained in this contract shall be construed to supersede the lawful powers or duties of either party.

### **Section 6.3 Items Comprising the Contract**

It is understood and agreed that the entire contract between the parties is contained herein, except for those matters incorporated herein by reference, and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter thereof.

See [Guidance for Article 7](#)

## **Article 7 Confidentiality**

### **Section 7.1 Client confidentiality**

The Provider shall not use or disclose any information concerning eligible clients who receive services from Provider for any purpose not connected with the administration of Provider's or Purchaser's responsibilities under this contract, except with the informed, written consent of the eligible client or the client's legal guardian.

### **Section 7.2 Contract not confidential**

Except for documents identifying specific clients, the contract and all related documents are not confidential.

See [Guidance for Article 8](#)

## **Article 8 Conflict of Interest**

The Provider shall ensure the establishment of safeguards to prevent employees, consultants, or members of the board from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business, or other ties.

Wilson County checked  
Excluded Parties  
Listing System, and did  
not find that Loving

## **Article 9 Debarment and Suspension**

The Provider certifies through signing this contract that neither the Provider nor any of its principals are debarred, suspended, proposed for

Care or I.M. Loving have been debarred or suspended. However, Wilson County wants to know if this situation changes during the course of the contract. See [Guidance for Article 9](#)

debarment, declared ineligible, or voluntarily excluded from participating in federal assistance programs by any federal department or agency. In addition, the Provider shall notify the Purchaser within five business days in writing and sent by registered mail if the Provider or its principals receive a designation from the federal government that they are debarred, suspended, proposed for debarment, or declared ineligible by a federal agency. The Purchaser may consider suspension or debarment to be may be cause for implementing high risk contract provisions under [Article 23 “Special conditions for high risk contract”](#) or for revising or terminating the contract under [Article 21 “Revision or termination of the contract.”](#)

Wilson County makes all eligibility determinations for clients that will be served by Loving Care. See [Guidance for Article 10](#)

## **Article 10 Eligibility**

The Provider shall provide services only to individuals who are eligible for services. Provider and Purchaser agree that the eligibility of individuals to receive the services to be purchased under this Agreement from the Provider will be determined by the Purchaser.

An individual has a right to an administrative hearing concerning eligibility and the Purchaser shall inform individuals of this right. The Provider shall provide clients with information concerning their eligibility and how to appeal actions affecting their rights.

Wilson County decided that Loving Care is not a Business Associate under HIPAA, it will not provide administrative services, and it will not perform electronic billing, so only the basic HIPAA language is needed. See [Guidance for Article 11](#)

## **Article 11 Health Insurance Portability and Accountability Act of 1996 “HIPAA” Applicability**

The Provider agrees to comply with the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the extent those regulations apply to the services the Provider provides or purchases with funds provided under this contract.

See [Guidance for Article 12](#)

## **Article 12 Indemnity and Insurance**

### **Section 12.1 Indemnity**

The Provider agrees that it will at all times during the existence of this Contract indemnify the Purchaser against any and all loss, damages, and costs or expenses which the Purchaser may sustain, incur, or be required to pay including those arising from death, personal injury, or property loss resulting from participating in or receiving the care and services furnished by the Provider under this Agreement. However, the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused by the Purchaser.

### **Section 12.2 Insurance**

The Provider agrees that, in order to protect itself as well as the Purchaser under the indemnity provision set forth in the above paragraph, the Provider will at all times during the terms of this Contract keep in force a liability insurance policy issued by a company authorized to do business in the State of Wisconsin and licensed by the Office of the Commissioner of Insurance. The types of insurance coverage and minimum amounts shall be as follows:

- Comprehensive General Liability: minimum amount \$1,000,000
- Auto Liability (if applicable): minimum amount \$1,000,000
- Professional Liability (if applicable): minimum amount \$1,000,000 per occurrence and \$3,000,000 for all occurrences in one (1) year.
- Umbrella Liability (as necessary): minimum amount \$1,000,000

Provider acknowledges that its indemnification liability to Purchaser is not limited by the limits of this insurance coverage.

Upon signing this Contract, Provider will furnish Purchaser with a “Certificate of Insurance” verifying the existence of such insurance. In the event of any action, suit, or proceedings against Purchaser upon any matter indemnified against, Purchaser shall notify the Provider by certified mail within five business days.

See [Guidance for Article 13](#)

## **Article 13 Independent Contractor**

Nothing in this contract shall create a partnership or joint venture between the Purchaser and the Provider. The Provider is at all times acting as an independent contractor and is in no sense an employee, agent or volunteer of the Purchaser.

Loving Care needs to be licensed by the State of Wisconsin. See [Guidance for Article 14](#)

## **Article 14 License, Certification, and Staffing**

### **Section 14.1 License and Certification**

The Provider shall meet state and federal service standards and applicable state licensure and certification requirements as expressed by state and federal rules and regulations applicable to the services covered by this contract. The Provider shall attach copies of its license or certification document and the most recent licensing or certification report concerning the Provider to this contract when returning the signed contract to the Purchaser. During the contract period, the Provider shall also send the Purchaser copies of any licensing inspection reports within 5 business days of receipt of such reports.

### **Section 14.2 Staffing**

The Provider shall ensure that staff providing services are properly supervised and trained and that they meet all of the applicable licensing and certification requirements.



Wilson County is concerned about the risk of needing to find another Provider on short notice if Loving Care cannot provide these services. Therefore, Wilson County is including a provision for liquidated damages in this contract. \$200.00 a day is an approximation of the damages that would occur for Wilson County's clients not receiving adequate care. See [Guidance for Article 15](#)

There are no MLE requirements for the funds that Wilson County is using for this contract. See [Guidance for Article 16](#)

Wilson County plans to pay Loving Care on a unit-times-unit-price with limited profit or reserves. See [Guidance for Article 17](#)

## **Article 15 Liquidated Damages**

### **Section 15.1 Noncompliance Resulting in Liquidated Damages**

The parties agree that any delays or failures by the Provider to perform under this contract, as specified below, may result in damage to the Purchaser. The parties further agree that the amount of damage would be difficult to calculate and thus will be the amount set forth below as liquidated damages. The Provider shall not be charged with liquidated damages when the delay or failure arises out of causes beyond the control and without the fault or negligence of the Provider.

If the Purchaser determines that the Provider has failed to provide to clients the care required in this contract, to the extent the client needs to be transferred, the Provider will be subject to liquidated damages for each day client is waiting in Provider's facility for transfer to a replacement Provider. The Purchaser will provide the Provider with a written notice of assessment and the Provider shall pay \$200.00 per day per client, but not to exceed 30 days.

### **Section 15.2 Payment of Liquidated Damages**

Amounts due the Purchaser as liquidated damages may be deducted by the Purchaser from any money payable to Provider under this contract, or the Purchaser may bill the Provider as a separate item and the Provider shall immediately make payments on such bills.

If the delay or failure causes the Purchaser to terminate this contract in whole or in part, the Provider remains liable for liquidated damages until the time the Purchaser may reasonably obtain performance of similar services.

## **Article 16 Matching, Level of Effort and Earmarking**

No matching, level of effort, or earmarking requirement.

## **Article 17 Payment and Allowable Costs**

### **Section 17.1 Amount paid under contract**

The maximum payment under this contract is \$216,400. Actual total payment will be based upon the amount of service authorized by the Purchaser and the amount of service performed by Provider. It is understood and agreed by all parties that the Purchaser assumes no obligation to purchase from the Provider any minimum amount of services as defined in the terms of this contract.

### **Section 17.2 Basis for payments**

Payments for services covered by this contract shall be based on allowable costs with limited profit or reserve. Monthly payments will be



made a unit-times-unit-price basis and in accordance with the “order of payment” requirements for the funding program, less client fees and other collections made by the Provider for services covered by this contract. Final settlement of the contract will be based on audit.

**Section 17.2.1 Units and prices** - The units and prices for each service purchased from the Provider are included in the table at the end of the contract.

The Purchaser shall determine the type of services provided and the number of units of services provided for each client. The Purchaser will not reimburse the Provider for any unit of service not previously authorized by the Purchaser.

(See [Article 22 “Services to be provided”](#) for description of the services purchased under this contract.)

(See [Article 21 “Revision or termination of the contract”](#) for revision of units or prices.)

**Section 17.2.2 Profit or reserves** - The Purchaser allows the Provider to have profit (for-profit Providers only) or reserve (non-profit Providers only). The profit and reserve are limited by expenditures on allowable costs that the Provider incurs in performing the services purchased under this contract. Allowable costs, profit, and reserve are defined in the *Allowable Cost Policy Manual* (online at <http://www.dhfs.state.wi.us/grants/Administration/ACPM.HTM>).

Wilson County decided that it would make all billings for client fees and third party collections. See [Guidance for Article 17](#)

**Section 17.2.3 Client fees and third party collections**

The Purchaser is responsible for all billing and collection for amounts due from clients and third parties. The Provider shall not collect any funds from clients or from third parties.

**Section 17.2.4 Audit** - The amount earned under this contract shall be confirmed through an annual audit (see [Section 1 “Audit”](#)). For profit Providers shall include a schedule in their audit reports showing the total allowable costs and the calculation of the allowable profit by contract or by service category. Non-profit Providers shall include a Reserve Supplemental Schedule (Section 7.1.6 of the *Provider Agency Audit Guide*) in their audit reports, and this schedule shall also be by contract or service category.

Wilson County will allow one month’s advance to help Loving Care get through the first month of operation, and it will require a surety bond for that advance. See [Guidance for Article 17](#)

**Section 17.3 Advance and surety bond**

**Section 17.3.1 Payment of the advance** - As soon as possible after the contract is signed by both parties, the Purchaser shall make an advance to the Provider in the amount of 1/12<sup>th</sup> of the maximum dollar amount to be paid under this contract.

**Section 17.3.2 Surety bond** - The Provider shall supply a Surety Bond. The Surety Bond must be for an amount at least equal to the amount of the advance payment and must accompany the signed contract that is returned to the Purchaser. The insurer issuing the surety bond must be licensed to conduct surety business in Wisconsin. The insurer shall use a bond form acceptable to the Purchaser.

**Section 17.3.2 Recoupment of the advance** - The advance will be recouped during the last three months of the contract period, or when payments made under the contract equal or exceed seventy-five percent of the contract amount. A final cash adjustment will be done after reconciliation of the Contract amounts to actual final reported expenses.

**Section 17.4 Reporting for payment**

Each month, the Provider shall report the units of service provided during the month on the forms provided by the Purchaser. The report is due to the Purchaser on the 15<sup>th</sup> day following the end of the report month. If the Provider's report is complete and timely, the expected payment date is the 30<sup>th</sup> day following the end of the report month. (See [Article 19 "Reporting"](#))

**Section 17.5 Payment in excess of earned amount**

The Provider shall return to Purchaser any funds paid in excess of the amount earned under this contract within 90 days of the end of the contract period. If the Provider fails to return funds paid in excess of the amount earned, the Purchaser may recover the excess payment from subsequent payments made to the Provider or through other collection means.

See [Guidance for Article 18](#)

**Article 18 Records**

**Section 18.1 Maintenance of records**

The Provider shall maintain and retain such records and financial statements as required by state and federal laws, rules, and regulations.

**Section 18.2 Access to records**

The Provider shall permit appropriate representatives of the Purchaser to have timely access to the Provider's records and financial statements as necessary to review the Provider's compliance with contract requirements for the use of the funding.

See [Guidance for Article 19](#)

**Article 19 Reporting**

The Provider shall comply with the reporting requirements of Purchaser. All reports shall be in writing and, when applicable, in the format specified by the Purchaser. All reports shall be supported by the Provider's records (See [Article 18 "Records"](#)). All reports shall be hand-delivered to the Purchaser or sent to the Purchaser via registered mail at the address listed in this contract.

The following reports are required:

Monthly

- Report for payment (Article 17)

Annually

- Audit report (Article 1)
- Summary of all client grievances (Article 5)

As needed

- Report on employee charged with or convicted of crime (Article 2)
- Reports on client grievances as they occur and summary report on all client grievances upon request of Purchaser ([Article 5](#))
- Report on determination of debarment or suspension status (Article 9)
- Copies of licensing and inspection reports (Article 14)
- Individual Service Plan (Article 22)
- If applicable, additional reports for high risk contract situation ([Article 23](#))

See [Guidance for Article 20](#)

## **Article 20 Resolution of Disputes**

The Provider may appeal decisions of the Purchaser in accordance with the terms and conditions of the contract and Chapter 68, Wis. Stats.

See [Guidance for Article 21](#)

## **Article 21 Revision or Termination of this Contract**

### **Section 21.1 Cause for revision or termination of this contract**

Failure to comply with any part of this contract may be considered cause for revision or termination of this contract.

### **Section 21.2 Revision of this contract**

Either party may initiate revision of this contract. Revision of this contract must be agreed to by both parties by an addendum signed by their authorized representatives.

### **Section 21.3 Termination of this contract**

Either party may terminate this contract by a 30-day written notice to the other party.

Upon termination, the Purchaser's liability shall be limited to the costs incurred by the Provider up to the date of termination. If the Purchaser terminates the contract for reasons other than non-performance by the Provider, the Purchaser may compensate the Provider for its actual allowable costs in an amount determined by mutual agreement of both parties. If the Purchaser terminates the contract for the Provider's breach, the Provider may be liable for any additional costs the Purchaser incurs for replacement services.

See [Guidance for Article 22](#)

## **Article 22 Services to be Provided**

### **Section 22.1 Description of services**

For each eligible client referred by the Purchaser, the Provider agrees to provide residential care services for persons with advanced Icky Awful Syndrome that will enable them to maintain their daily living needs, address needs for social contact, ensure their well-being and reduce the likelihood of their needing a more restrictive placement.

### **Section 22.2 Developing Individual Service Plans**

The Provider shall develop an Individual Service Plan for each client within 30 days following the date the Purchaser referred the client to the Provider. The Provider shall: (a) ensure that the Individual Service Plan complies with applicable standards; and (b) promptly submit the plan upon completion to the Purchaser for review and approval. The Provider agrees to work with the Purchaser as necessary when the Provider is developing an Individual Service Plan.

The Provider agrees to work with the Purchaser when the Purchaser is developing the Purchaser's Individual Service Plan.

### **Section 22.3 Implementing Individual Service Plans**

The Provider shall provide the services specified in this Article and in the Provider's Individual Service Plan for each client, as authorized by the Purchaser. In providing services, the Provider shall:

- a. Transfer a client from one category of care or service to another only with the approval of the Purchaser (s. 46.036(4)(d) Wis. Stats.).
- b. Coordinate with other service Providers as necessary to achieve the client's goals as identified in the Purchaser's and Providers Individual Service Plans;
- c. Obtain services from another party only with prior written approval from the Purchaser. If the Provider obtains services for any part of this Agreement from another party, the Provider is responsible for fulfillment of the terms of the contract.

### **Section 22.4 Other Program Requirements**

In providing required services under this contract, the Provider shall also comply with the following program requirements:

- a. Beyond the basic provisions of room, board, and laundry, the Provider shall also meet the basic needs of a client, including (generally) a room of his/her own, with his/her own choice of decorations (within reason), three meals daily, clean clothes, access to TV, radio, books, and other available recreational facilities, a reasonable degree of fellowship with family members, transportation to church, doctor, etc., and such assistance with medications,

bathing, dressing, etc., as the individual may require within a normal home and daily living. Provider shall see to it that the client has appropriate clothing, although this expense is the client's responsibility.

- b. The Provider shall provide for physical and emotional privacy for the client. Under this paragraph, "physical and emotional privacy" means reasonable privacy in toileting and bathing; keeping and using personal clothing and possessions; having reasonable privacy in one's room, or in other personally assigned areas; and being free from searches of personal belongings without the client's permission or permission of the client's guardian, unless the Provider has reasonable cause to suspect that the client possesses items which are illegal or prohibited by the Provider and the client is present during the room search.

**Section 22.5 Inability to provide quality or quantity of services**

The Provider shall notify the Purchaser in writing and delivered in person or by registered mail whenever it is unable to provide the required quality or quantity of services. Upon such notification, the Purchaser and Provider shall determine whether such inability will require a revision or termination of this contract. (See Article 21 "Revision or termination of the contract.")

**Section 22.6 Documentation of quality and quantity of services**

The Provider shall retain all documentation necessary to adequately demonstrate the time, duration, location, scope, quality, and effectiveness of services rendered under the contract. The Purchaser reserves the right to not pay for units of services reported by the Provider that are not supported by documentation required under this contract.

**Section 22.7 Standards for performance in delivery of services**

The Purchaser will monitor the Provider's performance and will use the results of this monitoring to evaluate the Provider's ability to provide adequate services to clients. If the Provider fails to meet contract goals and expected results, the Purchaser may reduce or terminate the contract. When providing these services, the Provider agrees to meet the following standards of performance, as measured through an annual client satisfaction survey conducted by the Provider and through observation and interviews conducted by the Purchaser's representative:

- a. Clients receive care and services in a timely manner.
- b. Clients receive care and services that meet their needs and preferences.
- c. Clients receive courteous and respectful services.

### **Section 22.8 Assessing performance in delivery of services**

The Purchaser retains sole authority to determine whether the Provider's performance under the contract is adequate. The Provider agrees to the following:

- a. The Provider shall allow the Purchaser's care manager and contracting staff to visit the Provider's facility or work site at any time for the purposes of ensuring that services are being provided as specified in the Plan of Care and the contract.
- b. Upon request by the Purchaser or its designee, the Provider shall make available to the Purchaser all documentation necessary to adequately assess Provider performance.
- c. The Provider will cooperate with the Purchaser in its efforts to implement the Purchaser's quality improvement and quality assurance program.
- d. The Provider shall develop and implement a process for assessing client satisfaction with services provided. The Provider shall report in a timely manner the results of its client satisfaction assessment effort to the Purchaser. The Purchaser reserves the right to review and approve the Provider's client satisfaction assessment process, and to require the Provider to submit a corrective action plan to address concerns identified in the review.
- e. The Provider shall cooperate with the Purchaser in implementing the Purchaser's program for assessing client satisfaction with services. The Purchaser reserves the right to require the Provider to submit a corrective action plan to address concerns identified in the review.

Loving Care only recently began operations, and Wilson County is concerned about the agency's financial expertise. Wilson County decided to address this risk by requiring Loving Care to hire a bookkeeper and engage an auditor at the beginning of the contract. See [Guidance for Article 23](#)

### **Article 23 Special Provisions For High Risk Contract**

The Purchaser has determined that this is a high risk contract. The Provider recently began operations. To mitigate the risks for a new Provider, the Provider shall:

- a. Hire a bookkeeper to keep financial records and to start at the beginning of the contract period and attach the bookkeeper's name, address, and telephone number to this contract.
- b. Hire an auditor to perform the annual audit and attach a copy of the signed engagement letter to this contract.

The Purchaser may unilaterally implement other changes depending on experience with the contract:

- a. Modifying the payment method to a cost reimbursement basis;

- b. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;
- c. Requiring additional, more detailed financial reports;
- d. Performing additional project monitoring;
- e. Requiring the Provider to obtain technical or management assistance;
- f. Establishing additional prior approvals; or
- g. Other conditions that the Purchaser considers appropriate considering the circumstances.

The Provider may appeal these changes under [Article 20 “Resolution of disputes.”](#) or it may request renegotiation of the contract or give notice of termination of the contract under [Article 21 “Revision or termination of the contract.”](#)

## Fee Schedule for Section 17.2.1 “Units and Prices”

Purchaser	<b>Wilson County HSD</b>
Provider	<b>Loving Care, Inc.</b>
Contract number	<b>2004-123</b>
Period	<b>1/1/2004 – 12/31/2004</b>
Effective date	<b>1/1/2004</b>
Contract amount	<b>\$216,400.00</b>

SPC or HIPAA code for service	Service	No. of clients	Client service units	Rate/unit (excluding room & board)	Room & board/unit	Total per service
<b>202.02</b>	<b>Adult Family Home</b>	<b>2</b>	<b>11.2 mo.</b>	<b>\$8,016.31/ mo.</b>	<b>\$559.83/ mo.</b>	<b>\$192,400.00</b>
<b>104.22</b>	<b>Supportive Home Care</b>	<b>1</b>	<b>2,028 hr.</b>	<b>\$11.60/hr.</b>		<b>\$24,000.00</b>
<b>Contract total</b>						<b>\$216,400.00</b>



## Appendix B – Short Form of Contract

Sometimes the statutes or good business practice indicate a contract is needed, but the full model contract is much more contract than warranted considering what is being purchased. Perhaps the Provider is an individual who you are hiring to shovel a client's sidewalk as part of the individual service plan that enables her to stay in her home. Or perhaps the Provider performs the same service for the private sector, such as a psychiatrist in private practice who you've hired to do a psychiatric evaluation for a client. In cases such as these, a Purchaser could decide to use a simpler contract.

This table on the following pages can be used to help you in deciding the form of the contract. Presumably, every article in the model purchase of services contract is important and most of them apply to most situations. Therefore, we used the model itself as the framework for deciding whether the model should be used. For each article indicate whether it applies or does not apply. Checkmarks in the "Model Purchase of Services" column indicate that the full contract may be the best choice. However, take into account the importance of an article – it might apply, but be very low priority to you. In addition, you could use the short form of the contract and append a particular article, such as the article on reporting.

You should consult your legal counsel when deciding on the form of the contract.

Examples of short forms of the contracts that several counties are using are available online at <http://www.dhfs.state.wi.us/grants/modelcontract.htm>:

- Crawford County's one-page Letter of Agreement.
- Richland County's two-page models for Limited Purchase Agreements for services, contractor services, and limited purchase agreement for materials/supplies. Richland County also requires an "assurance of completion" and a waiver document to be prepared by the contractor at the close of the contract.
- La Crosse County's three-page Letter of Agreement. They append HIPAA and civil rights requirements, and their example also includes an addendum for changes to services or rates.



Determining the form of the contract		
Provision	Letter of Agreement	Model Purchase of Services Contract
<a href="#"><u>Article 1 Audit</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 2 Caregiver Background Checks</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 3 Civil Rights Compliance Plan</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 4 Client Funds</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 5 Client Rights and Grievances</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 6 Conditions of the Parties Obligations</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 7 Confidentiality</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 8 Conflict of Interest</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 9 Debarment and Suspension</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 10 Eligibility</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 11 Health Insurance Portability and Accountability Act of 1996 “HIPAA” Applicability</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 12 Indemnity and Insurance</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 13 Independent Contractor</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 14 License, Certification, and Staffing</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 15 Liquidated Damages</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 16 Matching, Level of Effort, and Earmarking</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 17 Payment and Allowable Costs</u></a>	___ Does not apply	___ Applies

<a href="#"><u>Article 18 Records</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 19 Reporting</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 20 Resolution of Disputes</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 21 Revision or Termination of this Contract</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 22 Services to be Provided</u></a>	___ Does not apply	___ Applies
<a href="#"><u>Article 23 Special Provisions for High Risk Contract</u></a>	___ Does not apply	___ Applies

Conclusion: The circumstances for this contract indicate that the form of the contract should be:

\_\_\_\_\_ Letter of Agreement

\_\_\_\_\_ Model POS Contract

## Appendix C – Crosswalk Between Wis. Stat. 46.036 and the Model POS Contract

46.036 Purchase of care and services.

46.036(1)

All care and services purchased by the department or by a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437, except as provided under subch. III of ch. 49 and s. 301.08 (2), shall be authorized and contracted for under the standards established under this section. The department may require the county departments to submit the contracts to the department for review and approval. For purchases of \$10,000 or less the requirement for a written contract may be waived by the department. No contract is required for care provided by foster homes or treatment foster homes that are required to be licensed under s. 48.62. When the department directly contracts for services, it shall follow the procedures in this section in addition to meeting purchasing requirements established in s. 16.75.

See Introduction and regional office's annual POS contract memo for requirements on reviewing contracts and situations for when contracts are not needed.

Commentary: "Care and services" is not defined in the statute, and it would be helpful to have a definition. Our working definition is "Units of service or outcomes purchased by the county or department for the benefit of a client or group of clients in accordance with the Purchaser's service plan for the client(s)."

"Department" means the Department of Health and Family Services.

"County department under 46.215..." is a Department of Social Services in a county with population of 500,000 or more.

...46.22" is a Department of Social Services.

...46.23" is a Department of Human Services.

...51.42" is for community mental health, developmental disabilities and AODA.

...51.437" is developmental disabilities.

...Subch. III of ch. 49" is for Department of Workforce Development's economic support and work programs.

...301.08" is for Department of Corrections' juvenile delinquency programs.

46.036(2)

All care and services purchased shall meet standards established by the department and other requirements specified by purchaser in the contract. Based on these standards the department shall establish standards for cost accounting and management information systems that shall monitor the utilization of such services, and document the specific services in meeting the service plan for the client and the objective of the service.

See [Guidance for Article 18 “Records”](#) and [Guidance for Article 22 “Services to be Provided”](#)

46.036(3)

46.036(3)(a)

Purchase of service contracts shall be written in accordance with rules promulgated and procedures established by the department. Contracts for client services shall show the total dollar amount to be purchased and for each service the number of clients to be served, number of client service units, the unit rate per client service and the total dollar amount for each service.

The “rules” and procedures are Chapter B7 of the *Financial Management Manual* (this document, when finalized)

See [Contract Front Matter](#) and [Guidance for Article 17 “Payment and Allowable Costs”](#)

46.036(3)(b)

Payments under a contract may be made on the basis of actual allowable costs or on the basis of a unit rate per client service multiplied by the actual client units furnished each month. The contract may be renegotiated when units vary from the contracted number. The purchaser shall determine actual marginal costs for each service unit less than or in addition to the contracted number.

See [Guidance for Article 17 “Payment and Allowable Costs”](#) and [Guidance for Article 21 “Revision or Termination of this Contract”](#)

46.036(3)(c)

For proprietary agencies, contracts may include a percentage add-on for profit according to rules promulgated by the department.

See [Guidance for Article 17 “Payment and Allowable Costs”](#)

46.036(3)(d)

Reimbursement to an agency may be based on total costs agreed to by the parties regardless of the actual number of service units to be furnished, when the agency is entering into a contract for a new or expanded service that the purchaser recognizes will require a start-up period not to exceed 180 days. Such reimbursement applies only if identified client needs necessitate the establishment of a new service or expansion of an existing service.

See [Guidance for Article 17 “Payment and Allowable Costs”](#)

46.036(3)(e)

If the purchaser finds it necessary to terminate a contract prior to the contract expiration date for reasons other than nonperformance by the provider, actual cost incurred by the provider may be reimbursed for an amount determined by mutual agreement of the parties.

See [Guidance for Article 21 “Revision or Termination of this Contract”](#)

See [Guidance for Article 17](#)

46.036(3)(f)

Advance payments of up to one-twelfth of an annual contract may be allowed under the contract. If the advance payment exceeds \$10,000, the provider shall supply a surety bond for an amount equal to the amount of the advance payment applied for. No surety bond is required if the provider is a state agency. The cost of the surety bond shall be allowable as an expense.

[“Payment and Allowable Costs”](#)

46.036(3)(g)

Notwithstanding pars. (b) and (d), if a county has an existing system, approved by the department, to monitor and assess the outcomes of a contract and if the county is so authorized by the department, the county may contract with providers to pay in advance or after provision of services a fixed amount for each person served by the provider in return for a defined set of expected outcomes that are determined by the county.

To be developed – eventual home would be in [Guidance for Article 17 “Payment and Allowable Costs”](#)

46.036(4)

For purposes of this section and as a condition of reimbursement, each provider under contract shall:

46.036(4)(a)

Except as provided in this paragraph, maintain a uniform double entry accounting system and a management information system which are compatible with cost accounting and control systems prescribed by the department. The department shall establish a simplified double entry bookkeeping system for use by family-operated group homes. Each purchaser shall determine whether a family-operated group home from which it purchases services shall use the double entry accounting system or the simplified system and shall include this determination in the purchase of service contract. In this paragraph, "family-operated group home" means a group home licensed under s. 48.66 (1) (a) for which the licensee is one or more individuals who operate not more than one group home.

See [Guidance for Article 18 “Records”](#)

46.036(4)(b)

Cooperate with the department and purchaser in establishing costs for reimbursement purposes.

46.036(4)(c)

Unless waived by the department, biennially, or annually if required under federal law, provide the purchaser with a certified financial and compliance audit report if the care and services purchased exceed \$25,000. The audit shall follow standards that the department prescribes. A purchaser may waive the requirements of this paragraph for any family-operated group home, as defined under par. (a), from which it purchases services.

See [Guidance for Article 1 “Audit”](#)

46.036(4)(d)

Transfer a client from one category of care or service to another only with the approval of the purchaser.

[See Guidance for Article 22  
“Services to be Provided”](#)

46.036(4)(e)

Charge a uniform schedule of fees as defined under s. 46.03 (18) unless waived by the purchaser with approval of the department. Whenever providers recover funds attributed to the client, such funds shall offset the amount paid under the contract.

[See Guidance for Article 17  
“Payment and Allowable  
Costs”](#)

46.036(5)

Except as provided under sub. (5m), the purchaser shall recover from provider agencies money paid in excess of the conditions of the contract from subsequent payments made to the provider.

[See Guidance for Article 17  
“Payment and Allowable  
Costs”](#)

46.036(5m)

46.036(5m)(a)

In this subsection:

46.036(5m)(a)1.

"Provider" means a nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17), and that contracts under this section to provide client services on the basis of a unit rate per client service or a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 that contracts under this section to provide client services on the basis of a unit rate per client service.

[See Guidance for Article 17  
“Payment and Allowable  
Costs”](#)

46.036(5m)(a)2.

"Rate-based service" means a service or a group of services, as determined by the department, that is reimbursed through a prospectively set rate and that is distinguishable from other services or groups of services by the purpose for which funds are provided for that service or group of services and by the source of funding for that service or group of services.

46.036(5m)(b)

46.036(5m)(b)1.

Subject to subd. 2. and pars. (e) and (em), if revenue under a contract for the provision of a rate-based service exceeds allowable costs incurred in the contract period, the provider may retain from the surplus generated by that rate-based service up to 5% of the revenue received under the contract. A provider that retains a surplus under this subdivision shall use that retained surplus to cover a deficit between revenue and allowable costs incurred in any preceding or future contract period for the same rate-based service that generated the surplus or to address the programmatic needs of clients served by the same rate-based service that generated the surplus.

46.036(5m)(b)2.

Subject to pars. (e) and (em), a provider may accumulate funds from more than one contract period under this paragraph, except that, if at the end of a contract period the amount accumulated from all contract periods for a rate-based service exceeds 10% of the revenue received under all current contracts for that rate-based service, the provider shall, at the request of a purchaser, return to that purchaser the purchaser's proportional share of that excess and use any of that excess that is not returned to a purchaser to reduce the provider's unit rate per client for that rate-based service in the next contract period. If a provider has held for 4 consecutive contract periods an accumulated reserve for a rate-based service that is equal to or exceeds 10% of the revenue received under all current contracts for that rate-based service, the provider shall apply 50% of that accumulated amount to reducing its unit rate per client for that rate-based service in the next contract period.

46.036(5m)(e)

Notwithstanding par. (b) 1. and 2., the department or a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 that purchases care and services from an inpatient alcohol and other drug abuse treatment program that is not affiliated with a hospital and that is licensed as a community-based residential facility, may allocate to the program an amount that is equal to the amount of revenues received by the program that are in excess of the allowable costs incurred in the period of a contract between the program and the department or the county department for purchase of care and services under this section. The department or the county department may make the allocation under this paragraph only if the funds so allocated do not reduce any amount of unencumbered state aid to the department or the county department that otherwise would lapse to the general fund.

46.036(5m)(em)

Notwithstanding pars. (b) 1. and 2. and (e), a county department under s. 46.215, 51.42, or 51.437 providing client services in a county having a population of 500,000 or more or a nonstock, nonprofit corporation providing client services in such a county may not retain a surplus under par. (b) 1., accumulate funds under par. (b) 2., or allocate an amount under par. (e) from revenues that are used to meet the maintenance-of-effort requirement under the federal temporary assistance for needy families program under 42 USC 601 to 619.

46.036(5m)(f)

All providers that are subject to this subsection shall comply with any financial reporting and auditing requirements that the department may prescribe. Those requirements shall include a requirement that a provider provide to any purchaser and the department any

[See Guidance for Article 1  
“Audit” and Guidance for  
Article 19 “Reporting”](#)

information that the department needs to claim federal reimbursement for the cost of any services purchased from the provider and a requirement that a provider provide audit reports to any purchaser and the department according to standards specified in the provider's contract and any other standards that the department may prescribe.

46.036(6)

Contracts may be renegotiated by the purchaser under conditions specified in the contract.

See [Guidance for Article 21  
“Revision or Termination of  
this Contract”](#)

46.036(7)

The service provider under this section may appeal decisions of the purchaser in accordance with terms and conditions of the contract and ch. 68 or 227.

See [Guidance for Article 20  
“Resolution of Disputes”](#)

Unofficial text from Wis Stats. database. See printed Statutes and Wis. Acts for official text under s. 35.18(2) stats.